

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

Postal Rate and Fee Changes

Docket No. R2005-1

PRESIDING OFFICER'S RULING
ON DAVID B. POPKIN MOTION TO COMPEL
RESPONSES TO INTERROGATORIES

(Issued August 23, 2005)

On July 20, 2005, David B. Popkin filed a motion to compel responses to nine interrogatories.¹ The Postal Service objected to these discovery requests on various grounds in a pleading filed on July 7, 2005,² The Service responded to the Motion in a pleading filed on July 27, 2005.³

Eight of the nine interrogatories in controversy are cast as follow-ups to an earlier interrogatory, DBP/USPS-145. That interrogatory posed a series of detailed questions regarding the steps and processes involved in the delivery of a variety of mailpieces with differing characteristics. The Postal Service filed a partial objection to the interrogatory, stating that it planned to provide a descriptive response but protesting that a full response would be unduly burdensome.⁴ Mr. Popkin filed a motion to compel a

¹ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-214-220 and 222-223, July 20, 2005 (Motion).

² Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-214-220, 222-223), July 7, 2005 (Objection).

³ Opposition of the United States Postal Service to David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-214-220 and 222-223, July 27, 2005 (Opposition).

⁴ Partial Objection of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-145), June 17, 2005.

response to DBP/USPS-145 and five other interrogatories on June 20, 2005.⁵ The Postal Service submitted its narrative response to DBP/USPS-145, among other interrogatories, on the following day.⁶

In Presiding Officer's Ruling No. R2005-1/43, issued July 8, 2005, I noted the posture of the controversy concerning DBP/USPS-145, and in particular the lack of opportunity for Mr. Popkin to state whether the Service's descriptive response meets his needs and concerns. Accordingly, I denied his motion without prejudice at that time to allow Mr. Popkin the opportunity to file a supplemental motion should he view the Service's intervening response as inadequate.

In lieu of submitting a supplemental motion, Mr. Popkin directed DBP/USPS-214 through 222 to the Postal Service. The Postal Service responded to DBP/USPS-221 on July 11, 2005⁷, and objected to the others, as noted above. Thus, in view of Mr. Popkin's new motion to compel, eight of the follow-up interrogatories to DBP/USPS-145 remain in controversy, as well as DBP/USPS-223.

As a general matter, the Postal Service argues that the focus of this discovery dispute is misplaced, as the significance of the detailed information being sought has been overtaken by alternative service options made available since the last two omnibus rate proceedings. The Service also cites rulings in earlier rate dockets in which the Presiding Officer rejected efforts to compel answers to this kind of detailed inquiry into return receipt procedures at IRS facilities and other government agencies.⁸

DBP/USPS-214. Referring to the portion of the Service's answer to DBP/USPS-145 that describes how an individual piece of Certified Mail or Delivery Confirmation mail would be processed if delivered to an IRS facility or other government agency, this

⁵ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-88, 90, 103, 129, 145, and 147, June 20, 2005.

⁶ Responses of United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-144-146, 148), June 21, 2005.

⁷ Response of United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-221), July 11, 2005.

⁸ Opposition at 4-6.

interrogatory asks the Service to confirm that receipt of a single piece at such destinations would be rare. The Postal Service objects, claiming lack of relevance to any material issue in the proceeding and the burden of expending several hours to contact the IRS and other government destinations.⁹

In his Motion, Mr. Popkin states that the interrogatory is designed to confirm his “perception” that the IRS would “hardly ever” receive only a single piece of accountable mail. He also argues that several hours’ labor is “certainly not a burden.”¹⁰ The Postal Service responds that it would be unduly burdensome to survey government recipients to determine the extent of single-piece deliveries, and that the procedures it described in its response to DBP/USPS-145 apply equally to the delivery of single pieces of accountable mail and multiple pieces.

I agree with the Postal Service that compelling a response to this interrogatory would not be justified. Mr. Popkin’s original interrogatory focuses on procedural steps and processes, which the Service’s response describes. As the Service observes, the described processes are equally applicable to single pieces and mail received in bulk. Thus, the information sought is immaterial to Mr. Popkin’s original inquiry in DBP/USPS-145, and DBP/USPS-214 does not constitute an appropriate follow-up interrogatory.

DBP/USPS-215. This interrogatory seeks additional information regarding mail processing procedures used at IRS and other government mail processing facilities, two of which methods are described in the Service’s response to DBP/USPS-145. The Postal Service reiterates its original objection to the parallel inquiry in DBP/USPS-145; asserts that it has already provided all the information it possesses in its earlier response; and argues that it should not be burdened with obtaining more.¹¹

Mr. Popkin’s Motion surmises that the Service’s response to DBP/USPS-145 describes procedures used at IRS facilities, and not necessarily at all large Washington, D.C. government agencies. He claims that DBP/USPS-215 attempts to clarify and

⁹ Objection at 2.

¹⁰ Motion at 2.

¹¹ Objection at 3.

resolve this response, and that the Postal Service has failed to quantify the burden of providing a response.¹² The Service responds that the requested information is not needed to resolve issues in this proceeding, and reiterates the burden of approximately 90 hours claimed in its objection to DBP/USPS-145.¹³

I agree with the Postal Service that the nature of the information sought in DBP/USPS-215 does not justify imposing any additional burden of further inquiry on the Service. The minutiae of the potentially varying methods by which different government agencies may handle incoming accountable mail have a remote bearing, at best, on the value of the special services purchased by the sender. Therefore, I shall not compel a response to this interrogatory.

DBP/USPS-216. This interrogatory asks for a copy of Postal Service Form 3883, and for clarification of differences in certain features of that form and of PS Form 3849. The Postal Service objects that the question inquires into details of Forms 3849 and 3883 that are irrelevant to the issues in this proceeding, and that it is not a proper follow-up question, since it goes beyond what is needed to understand the response to DBP/USPS-145.¹⁴

In his Motion, Mr. Popkin argues that the interrogatory poses very specific questions “designed to clarify and resolve inconsistencies in the original response between the use of Form 3883 vs. Form 3849.”¹⁵ The Postal Service replies that, while Mr. Popkin may want such clarification to argue for different procedures, it is not necessary to understand the procedure described in the response to DBP/USPS-145, and the requested level of detail is not relevant to this rate case.¹⁶

It is by no means obvious that the relevant portion of the Postal Service’s response to DBP/USPS-145 contains inconsistencies regarding the use of its Forms

¹² Motion at 2-3.

¹³ Opposition at 2.

¹⁴ Objection at 3.

¹⁵ Motion at 3.

¹⁶ Opposition at 2.

3883 and 3849.¹⁷ Nevertheless, Mr. Popkin's follow-up question legitimately seeks clarification of the features and interrelationships of forms referenced in the Service's narrative description of incoming mail processing. There is no claim of undue burden, and presumably the source of the information provided in the response to DBP/USPS-145 can be queried to provide an answer to this follow-up question. Therefore, I shall grant the Motion as to this interrogatory.

DBP/USPS-217. This interrogatory asks the Postal Service to confirm the existence of a signature waiver option for some mail services, and to compare that option with the first procedure described in a portion of DBP/USPS-145. The Postal Service objects to the question as cumulative, irrelevant, and improper follow-up because it does not seek clarification of the response to the interrogatory.¹⁸

In the Motion, Mr. Popkin argues that his follow-up inquiry attempts to clarify a scenario that he views as "reasonably identical to the waiver of signature procedures."¹⁹ The Service responds that Mr. Popkin's attempted analogy is too detailed and speculative to be relevant to issues in this case, and in any event should be a subject for testimony or briefs, rather than discovery.²⁰

This interrogatory plainly strays from elucidation of the original response by interjecting a comparison with a service feature never mentioned in DBP/USPS-145. The aptness of the analogy may be a proper subject for independent testimony or argument, but it does not constitute appropriate follow-up discovery. Accordingly, the Motion shall be denied as to this interrogatory.

DBP/USPS-218. This interrogatory explores the purpose for which a mailer sends accountable mail to a government agency; possible agreements between the Postal Service and the addressee concerning delivery accountability; and proof that

¹⁷ The description of processing in the response states, among other facts, that "[t]he barcode from the Form 3883 is linked to the signature obtained on the Form 3949."

¹⁸ Objection at 4.

¹⁹ Motion at 4.

²⁰ Opposition at 2-3.

would enable the mailer to hold the addressee accountable for receipt of the mail. The Service objects to the interrogatory as cumulative, claiming that similar questions were answered in the response to DBP/USPS-144. It also states that it cannot speak to the purpose its customers may have for selecting a service; that it is unaware of any agreements of the kind sought; and that it protests the burden of obtaining any such agreements. The Service claims that the issue of accountability between postal customers and government agencies is a legal matter for which discovery on the Postal Service in this proceeding would occur in an inappropriate forum.²¹

In his Motion, Mr. Popkin argues that the interrogatory has no relation to the inquiries in DBP/USPS-144; that the Service can reasonably be expected to be aware of why customers choose various services; and that the first procedure described in the answer to DBP/USPS-145 implies the existence of an agreement with the IRS and the responsibility of the latter agency for having received the mail.²² The Postal Service reiterates the substance of its initial objection, and also argues that discovery is for factual matters, not legal analysis.²³

I agree with the Postal Service that this interrogatory is cumulative, and thus an inappropriate follow-up question. The movant and Mr. Carlson have already laboriously explored the Postal Service's responsibility for, and handling of, accountable mail in their series of interrogatories. The Postal Service has provided responsive information in its answers to such interrogatories as DBP/USPS-, 144, 145, and DFC/USPS-32. Further, the Service has disclaimed knowledge of the agreements sought in this interrogatory, and the specific motives of customers in choosing various services. Given this state of the record, I find that no useful evidentiary purpose would be served by compelling a response to this interrogatory.

DBP/USPS-219. This interrogatory asks the Service to confirm that existing postal regulations require that the addressee sign for accountable mail prior to

²¹ Objection at 5.

²² Motion at 5.

²³ Opposition at 3.

transferring control of it; to explain the purpose of these regulations; and to confirm that the first procedure described in the response to DBP/USPS-145 does not allow compliance with the regulations. The Postal Service objects that the questions are cumulative, and lack relevance because they do not have a sufficient nexus to value of service or other issues in this proceeding.²⁴

In the Motion, Mr. Popkin asserts a right to a Postal Service confirmation whether the specific procedures described in DBP/USPS-145 comply with regulations, and that the value of Return Receipts service depends on the Service's ability to comply with its own regulations.²⁵ The Postal Service responds that the questions are cumulative to its responses to DFC/USPS-32 and DBP/USPS-144, and that it has already stated all that is necessary concerning its compliance with regulations.²⁶

I agree with the Postal Service that this interrogatory is cumulative. In its revised response to DFC/USPS-32, the Service acknowledges "that the practicalities of delivering return receipt mail to high volume addresses may not allow for obtaining signatures on the green card return receipts before the mail is transferred to the recipient." Because a compelled response to these questions would add nothing to this response, I shall deny the Motion as to this interrogatory.

DBP/USPS-220. Citing the two procedures described for Certified Mail in the Service's response to DBP/USPS-145, this interrogatory asks the Service to provide similar information for the electronic return receipt service and Delivery Confirmation. The Service objects that these questions are cumulative, and lack relevance in this proceeding. Moreover, the Service adds, the procedures discussed in the response to DBP/USPS-145 are similar to those for Delivery Confirmation and the electronic return receipt option, which the Service then briefly describes.²⁷

²⁴ Objection at 6.

²⁵ Motion at 5-6.

²⁶ Opposition at 3-4.

²⁷ Objection at 6-7.

In his Motion, Mr. Popkin denies that the interrogatory is cumulative because the Service's response to DBP/USPS-145 does not at any point discuss the processing of Delivery Confirmation mail or electronic return receipts. He also observes that the Service has, in effect, provided a response to his interrogatory in its objection, but that he cannot designate an objection in order to make further evidentiary use of that reply.²⁸ The Service notes that Ruling No. 43 denied Mr. Popkin's motion to compel a response to DBP/USPS-145 without prejudice, but allowed for the filing of a supplemental motion. To the extent Mr. Popkin's follow-up interrogatories substitute for a supplemental motion, the Service argues that he has not established that additional information is needed to address issues in this proceeding.²⁹

Mr. Popkin correctly notes that the Postal Service has provided what appears to be a serviceable answer to the challenged interrogatory in the process of objecting to it. As he also observes, by embedding its response in a pleading, the Service's statement of fact would be deprived of its potential value as evidence. Therefore, in the interest of allowing the movant an opportunity to make a factually complete record in this case, I shall grant the Motion as to this interrogatory.

DBP/USPS-222. This interrogatory poses questions regarding the Service's compliance with its regulations requiring that return receipts be placed in the mail no later than the day following delivery of the associated mailpiece. As with DBP/USPS-219, the Postal Service objects that the questions are cumulative, and lack relevance because they do not have a sufficient nexus to value of service or other issues in this proceeding.³⁰

Mr. Popkin's Motion again asserts his right to confirmation of whether the specific procedures described in DBP/USPS-145 are in compliance with regulations, and that the value of service of Return Receipts and the associated accountable mail depends

²⁸ Motion at 6.

²⁹ Opposition at 4.

³⁰ Objection at 7.

on the Service's ability to comply with its regulations.³¹ The Postal Service reiterates its earlier argument that the interrogatory is cumulative to its answers to DFC/USPS-32 and DBP/USPS-144, and that it has already stated all that is necessary concerning its compliance with regulations.³²

The conclusion applicable to DBP/USPS-219 is also dispositive here: in light of the Service's revised response to DFC/USPS-32, the interrogatory is cumulative. Therefore, the Motion shall also be denied as to this interrogatory.

DBP/USPS-223. Unlike the preceding eight interrogatories, this set of questions refers to the Postal Service's response to DFC/USPS-32, and asks for: (a) quantification of the term "high volume addresses" used in the response; (b) an explanation of why delivering return receipt mail to high volume addresses does not allow for obtaining signatures before transfer to the recipient; (c) guidelines or directives from the past five years regarding proper service for accountable mail and/or return receipts; and (d) guidelines or directives from the past five years defining the term "high volume addresses." The Service objects on the ground that the definition of "high volume addresses" is not relevant to material issues in this proceeding, and because the request for guidelines, directives, and memoranda is cumulative to interrogatories DFC/USPS-9, 42, and 52. It further objects to subpart (b) as cumulative to its revised response to DFC/USPS-32, which it says refers to several sources of responsive information.³³

In his Motion, Mr. Popkin claims that the definition of "high volume addresses" is relevant to the value of service, and it is reasonable to expect the Postal Service to define its use of the term. He also argues that, unlike Mr. Carlson's interrogatories, DPB/USPS-223 uses a timeframe of five years, rather than the interval since the last omnibus rate proceeding, and that he requests information beyond that applicable to Certified Mail. If the Service wishes to state in referring to its responses to Carlson

³¹ Motion at 6-7.

³² Opposition at 3.

³³ Objection at 8.

interrogatories that there has been no activity in the interval between five years ago and the last rate case, it has that right, he states. He also notes that the response to DFC/USPS-9 provides 68 pages of attachments with no explanation of which parts are responsive to his question.³⁴

In response, the Postal Service claims that seeking a definition of “high volume addresses” inquires into too small a detail to affect value of service considerations relevant to this proceeding. It also repeats its argument that it has already provided what responsive information it has in its responses to the four cited Carlson interrogatories.³⁵

I shall not compel the Postal Service to provide a response to this interrogatory. I agree with the Service that a specific definition of “high volume addresses” has little if any bearing on “the value of the mail service actually provided each class or type of mail service to both the sender and the recipient[.]” 39 U.S.C. § 3622(b)(2). Other than making a bald claim of relevance, the movant does not identify any such nexus. Further, in its answer to DFC/USPS-32 and other responses it cites, the Postal Service has identified its policies and practices going back as far as the record of the Docket No. R97-1 proceeding. Thus, I find no useful evidentiary purpose would be served by compelling a further response by the Postal Service.

³⁴ Motion at 7-8.

³⁵ Opposition at 4.

RULING

The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-214-220 and 222-223 is:

- a. granted as to DBP/USPS-216 and 220; and
- b. denied as to DBP/USPS-214, 215, 217, 218, 219, 222, and 223.

George Omas
Presiding Officer