

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 September 13, 2005)

On July 27, 2005, David B. Popkin filed a motion to compel responses to six interrogatories.¹ The Postal Service objected to these discovery requests on various grounds in pleadings filed on July 14,² July 15,³ and July 19,⁴ 2005. The Service responded to the Motion in pleadings filed on August 2,⁵ August 3,⁶ and August 16,⁷ 2005. Each interrogatory will be considered in numerical order below.

¹ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-198, 241 to 243, 264, and 274, July 27, 2005 (Motion).

² Objection of the United States Postal Service to Interrogatory DBP/USPS-198, July 14, 2005 (Objection of July 14).

³ Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-241-243), July 15, 2005 (Objection of July 15).

⁴ Objections of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-264 (c&f) and 274), July 19, 2005 (Objection of July 19).

⁵ Opposition and Reply of the United States Postal Service to David Popkin Motion to Compel Responses to DBP/USPS-264(c&e) and 274, August 2, 2005 (Opposition and Reply). Notwithstanding its caption, the pleading addresses subparts (c) and (f) of DBP/USPS-264, to which its Objection of July 19 applies.

⁶ Response of the United States Postal Service to Motion to Compel Response to Interrogatories of David B. Popkin (DBP/USPS-241-243), August 3, 2005 (Response of August 3).

⁷ Response of the United States Postal Service to Popkin's Second Motion to Compel Response to Interrogatory DBP/USPS-198, August 16, 2005 (Response of August 16). The Service's Response was filed one day out of time, and was accompanied by a motion for its late acceptance. In view of the slightness of the pleading's tardiness, the Service's motion shall be granted.

DBP/USPS-198. This interrogatory refers to the Service's response to DBP/USPS-41, and then poses detailed operational questions regarding circumstances under which six-day-per-week delivery would or would not be provided to post office boxes at post offices without Saturday window services. In its objection, the Postal Service asserts that the question seeks irrelevant information and does not constitute proper follow-up, as very similar interrogatories have either been answered or opposed by objection. Further, the Service notes that motions to compel the production of similarly detailed information on service at post offices without retail window service on Saturdays were denied in Docket No. R2000-1.

In Ruling No. 59, I agreed with the Postal Service that there are insufficient grounds to compel production of the information sought in this interrogatory, finding the requested degree of operational detail to be beyond reasonable bounds.⁸ Mr. Popkin sought reconsideration of this determination in a pleading he filed on August 1,⁹ and I granted his motion on August 10.¹⁰

Mr. Popkin's argument on reconsideration consists of a verbatim repetition of the claims in his motion for reconsideration of the disposition in Ruling No. 59: that the Postal Service appears to be pursuing a litigation strategy of late-filed responses to interrogatories; that as a result DBP/USPS-198 must be considered under the rules applicable to follow-up interrogatories; and that the interrogatory seeks information relevant to the value of mail service in general and to the value of post office box service in particular.¹¹

In its Response of August 16, the Postal Service denies having a litigation strategy of filing interrogatory responses late, and notes the particular difficulties associated with interrogatories that are not directed to a specific witness and those that

⁸ Presiding Officer's Ruling No. R2005-1/59, July 28, 2005, at 2.

⁹ David B. Popkin Motion to Request Reconsideration of Presiding Officer's Ruling No. R2005-1/59 with Respect to Interrogatory DBP/USPS-198, August 1, 2005 (Motion to Request Reconsideration).

¹⁰ Presiding Officer's Ruling No. R2005-1/69, August 10, 2005.

¹¹ Motion at 1-3; Motion to Request Reconsideration at 1-3.

are “less and less germane to the issues in a particular case[.]”¹² While regretting that the response to DBP/USPS-41 was delayed, the Service argues that it does not matter whether DBP/USPS-198 is subject to the rules for follow-up interrogatories or not because in either case it is objectionable for seeking detailed information that is irrelevant and immaterial to ratemaking. Citing Presiding Officer’s Ruling No. R2000-1/56, the Service argues that DBP/USPS-198 violates the standards governing the level of detail that may reasonably be requested in discovery in a rate proceeding. Further, citing the same ruling in R2000-1, the Service argues that DBP/USPS-198 does not constitute proper follow-up under section 26(a) of the rules of practice, because it does not incorporate a “logical next step” to DBP/USPS-41.¹³

I reaffirm my initial ruling in R2005-1/59 that the discovery request in DBP/USPS-198 does not warrant compelling the production of the requested information. First, there is no evident basis in fact for the claim that the Postal Service has been deliberately dilatory in its responses to the movant’s interrogatories, especially in view of the incessant stream of interrogatories and motions practice he has maintained throughout this proceeding. Further, by posing such detailed and open-ended requests as “specify[ing] any conditions where customers having street delivery will receive mail on a day when a post office box customer will not have delivery service [.]” the interrogatory clearly has exceeded the reasonable bounds of discovery in the context of an omnibus rate proceeding, as established in such prior authority as Presiding Officer’s Ruling No. R2000-1/56. Moreover, as the Service notes, the interrogatory is procedurally defective as follow-up because it inquires into postmasters’ discretion to *provide post office box delivery service* only five days a week, rather than a postmaster’s discretion in *restricting post office lobby access* when no one is on duty, which was the premise in DBP/USPS-41. Given the differing focus of inquiry, there is no evident “logical next step” from DBP/USPS-41 to DBP/USPS-198. For all these reasons, I shall deny the renewed motion as to DBP/USPS-198.

¹² Response of August 16 at 2.

¹³ *Id.* at 5.

DBP/USPS-241 through 243. These interrogatories refer to the Service's discussion of DBP/USPS-170 subparts (h) and (i) in its Opposition to that interrogatory filed on July 6, 2005,¹⁴ and concern Erent values for post office boxes at various postal facilities. The Postal Service objected on the grounds that the interrogatories violate section 26(a) of the rules by attempting to pose follow-up questions to information provided in a pleading, and that they were untimely filed.¹⁵ Mr. Popkin claims that the Service in effect responded to DBP/USPS-170 by providing information in its Opposition to that interrogatory, and thus should be subject to appropriate follow-up.¹⁶ The Postal Service replies that the interrogatories ignore the clear language of section 26(a), which it argues limits follow-up to inquiry into interrogatory responses only. It also argues that questions about Erents are irrelevant because the Service's request for an across-the-board rate increase does not involve changes to that system.¹⁷

The motion shall be denied as to these interrogatories. As I recently ruled, it is inappropriate to proffer factual matter in a pleading in lieu of providing the same facts in a response to a valid discovery request, as this would deprive the asking party of the opportunity to enter the facts into the record.¹⁸ However, in the case of DBP/USPS-170, I found in Ruling No. 48 that Mr. Popkin's query was not a valid follow-up interrogatory, was untimely, and accordingly denied his motion to compel a response.¹⁹ Thus, there is no cognizable factual response to that interrogatory on which to conduct follow-up discovery. Mr. Popkin's attempt to cast some of the Service's statements in a pleading related to that interrogatory as a "response" attempts an end-run around my ruling and the clear intent of section 26(a) of the rules, and will not be tolerated.

¹⁴ Opposition of the United States Postal Service to David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-110, 117, 122[C, D], 158, and 170[C-F, H-I], July 6, 2005.

¹⁵ Objection of July 15, *supra*.

¹⁶ Motion at 3-4.

¹⁷ Response of August 3 at 2.

¹⁸ Presiding Officer's Ruling No. R2005-1/73, August 23, 2005, at 8.

¹⁹ Presiding Officer's Ruling No. R2005-1/48, July 8, 2005.

DBP/USPS-264 (c) and (f). This interrogatory refers to the responses to OCA/USPS-186 to 193, and the two subparts in controversy ask why the Postal Service abandoned the use of letters of the alphabet for non-denominated First-Class stamps, and why there are no plans to return to such a system, if such a decision has been reached. The Service objected on the ground of irrelevance to issues in this proceeding.²⁰

Mr. Popkin argues that these subparts are relevant inquiries in light of the agreement of the Postal Service and the Office of the Consumer Advocate to establish a working group to investigate introduction of a non-denominated stamp for first-ounce single-piece First-Class letter postage that, once purchased, would remain valid in perpetuity—a so-called “forever” stamp.²¹ In response, the Postal Service reiterates its position that the requested information is irrelevant to this docket, arguing that there is no substantive issue arising from its Request that provides a basis for exploring why the Service stopped issuing alphabetical letter non-denominated stamps after Docket No. R97-1. The Service adds that there is no nexus between any issue in the current case and the putative design of a future “forever” stamp, should that proposal come to fruition.²²

I agree with the Postal Service that the potential relevance of information responsive to the two controversial subparts is too remote to warrant compelling its production. The graphic design of postage stamps in bygone years has no direct relevance to the issues to be decided in this case. Further, the potential design of a “forever” stamp will become relevant only when a concrete proposal is before the Commission. Consequently, the motion will be denied as to the two subparts of this interrogatory.

²⁰ Objection of July 19 at 1.

²¹ See Office of the Consumer Advocate Notice of Receipt of Letter from Postmaster General Potter Detailing the Agreement Reached between the Postal Service and OCA, July 25, 2005.

²² Opposition and Reply at 1-3.

DBP/USPS-274. This interrogatory is the latest in a series of questions inquiring into the relationship between improving delivery service performance and pay incentives for various categories of postal management employees.²³ Specifically, it asks for the potentially different performance weighting distinctions used to determine pay increases for six different categories of management employees. The Postal Service objected to the interrogatory as “an abuse of discovery for the purpose of pursuing data irrelevant to this docket and beyond the scope of the Commission’s responsibilities.”²⁴

Mr. Popkin argues that, if the earlier responses to DBP/USPS-5, 157, and 231 are relevant, then this latest follow-up requests data that likewise are relevant.²⁵ The Postal Service replies that it responded reasonably to preceding interrogatories in the series, but draws the line at the inquiry in DBP/USPS-274, which it asserts is a request for a level of detail regarding compensation formulas for postal managers that is patently immaterial and irrelevant to issues generated by its request in this docket. The Service also argues that movant’s perception of relevance is misguided, because its tolerance of earlier questions in the series does not establish the intrinsic relevance of the data sought in DBP/USPS-274, which must be appraised on its own merits.²⁶

I shall deny the motion as to this interrogatory. Without assessing the relevance and materiality of the earlier interrogatories in this line to which the Postal Service voluntarily replied, DBP/USPS-274 clearly seeks excessively detailed information regarding compensation matters that have little if any bearing on issues of postal ratemaking. Therefore, the information sought lacks intrinsic relevance and materiality in this proceeding, and its production will not be compelled.

RULING

²³ DBP/USPS-274 follows up on the Postal Service response to DBP/USPS-231, which follows up on DBP/USPS-157, which in turn follows up on the Service’s response to DBP/USPS-5.

²⁴ Objection of July 19 at 2.

²⁵ Motion at 5-6.

²⁶ Opposition and Reply at 3-6.

1. The Motion of the United States Postal Service for Late Acceptance of the Response of the Postal Service to Popkin's Second Motion to Compel Response to Interrogatory DBP/USPS-198, filed August 16, 2005, is granted.

2. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-198, 241 to 243, 264, and 274, filed July 27, 2005, is denied.

George Omas
Presiding Officer