

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

ANSWER IN OPPOSITION TO MOTION OF DAVID B. POPKIN TO  
PERMIT WRITTEN INTERROGATORIES TO POSTAL SERVICE REBUTTAL  
TESTIMONY

The United States Postal Service hereby opposes the Motion of David B. Popkin to Permit Written Interrogatories to Postal Service Rebuttal Testimony, filed December 13, 1996. In his Motion, Mr. Popkin states that because he is located "some distance to Washington, D.C.," it would be "difficult to justify a trip" to Washington to conduct oral cross-examination. In lieu of making an appearance in Washington to conduct oral cross-examination, Mr. Popkin requests permission to submit written interrogatories to Postal Service witnesses. Mr. Popkin's Motion fails to cite any legal or factual standard beyond his own personal convenience in support of his request, which should, accordingly, be denied.

Mr. Popkin's Motion directly conflicts with the Commission's Rules of Practice and Procedure. Pursuant to the Hearing Schedule set forth in Attachment A to P.O. Ruling MC96-3/3, "No discovery [is] to be permitted on . . . rebuttal evidence" filed on December 6, 1996. This is consistent with the premise underlying the procedural schedule that there should ordinarily be three phases of hearings, with each successive phase featuring shorter time frames and more limited means of exercising the right of examination. Moreover, the period for conducting written cross-examination on the Postal Service has long expired. In short, his request to conduct discovery conflicts with the Rules and, if granted, would constitute a major change in how procedural schedules are set.

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Mr. Popkin's request is also vague and overbroad. He requests permission to "submit written interrogatories to the Postal Service's witness[es]."<sup>1</sup> It is unclear to whom Mr. Popkin intends to direct written discovery, let alone what the subject matter of that discovery would be. Mr. Popkin, moreover, makes absolutely no effort to show that his request is justified. He has not made any attempt to demonstrate extraordinary circumstances that written discovery in this context serves any legitimate, strategic purpose, such as to deal with technical or new evidence submitted in rebuttal. *Cf.* Docket No. MC95-1, P.O. Ruling at vol. 32/14600-03.

Mr. Popkin has also failed to circumscribe the nature, scope or amount of the written interrogatories he intends to ask. As the Commission and participants are well aware, Mr. Popkin has availed himself of multiple opportunities to direct countless questions to postal witnesses on various minutia, and there is no reason to believe Mr. Popkin will exercise any restraint if given permission here to conduct written examination.<sup>2</sup> Giving Mr. Popkin the opportunity to conduct discovery at this late date, moreover, seriously threatens to undermine the Presiding Officer's intent to close the record promptly and only risks adding delays to the procedural schedule. Any delays in the procedural schedule could have a financial impact that would dwarf any expense Mr. Popkin would have incurred in visiting Washington.

Finally, Mr. Popkin's stated reason for not appearing at hearings is purely one of personal convenience. The sole reason he offers for conducting written cross examination is that he is "unable to justify a trip" to Washington. He does *not* state that he is without means to come to visit Washington or that it would have been

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<sup>1</sup> (Brackets in original).

<sup>2</sup> Even OCA witness Collins commented that Mr. Popkin had "filed a great many interrogatories. It took Herculean effort to read them, let alone answer them...." Tr. 5/1809.

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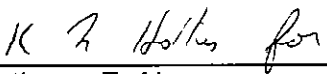
unduly burdensome for him, financially, to attend a hearing in Washington. *Cf. NLRB v. Southwestern Greyhound Lines*, 126 F.2d 883, 887-88 (8th Cir. 1942). Rather, it is evident from his Motion that he has determined that the costs of making an appearance outweigh the potential benefits to him. This sort of inconvenience certainly is not "oppressive." *Cf. id.* In sum, no known legal authority supports the granting of his request under these circumstances.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

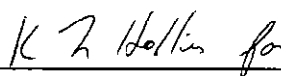
By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

  
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Anthony F. Alverno

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

  
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Anthony F. Alverno

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