

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF DAVID B. POPKIN TO COMPEL
RESPONSES TO DBP/USPS-19-23, 24[A, C-E], 25, 26[C-E], and 28-36
(April 10, 2000)

In accordance with Rule 26 of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby opposes the motion of Mr. Popkin to compel responses to interrogatories DBP/USPS-19-23, 24(a, c-e), 25, 26(c-e), and 28-36.¹

The Postal Service wishes to address some of Mr. Popkin's general arguments. First, Mr. Popkin alleges in paragraph 1 of his motion that the Postal Service's objections are "broad brush", similar to those made by the Postal Service in Docket No. R97-1. The initial Docket No. R97-1 objection did not address specific interrogatories at all, but instead sought a "blanket general exemption" from responding.² The Postal Service's objections at issue now focus on individual interrogatories, and state substantive objections.

Second, Mr. Popkin quotes the Presiding Officer's ruling on the Docket No. R97-1 objection, that care must be taken to assure that Commission procedures not be used to intimidate other participants. While that comment may have been directed at the Postal Service in Docket No. R97-1, in response to its generalized objection to Mr.

¹ Motion to Compel Responses to Interrogatories DBP/USPS-19-23, 24[a, c-e], 25, 26[c-e], 28-36, and 98[b-e], filed by David B. Popkin on April 3, 2000. Hereinafter, Motion. The Postal Service's response to Mr. Popkin's motion to compel a response to interrogatory 98[b-e] was filed on April 6, 2000.

² See Presiding Officer's Ruling No. R97-1/21, at 3.

Popkin's interrogatories, the greater problem in this proceeding is presented by Mr. Popkin (whether intended or not). Mr. Popkin has filed hundreds of questions in this proceeding, and in recent rate cases. Many of these interrogatories, including the ones at issue here, stray beyond the areas of witness expertise, and focus inherently on local conditions of specific interest to Mr. Popkin, rather than on issues national in scope. For each hour that Mr. Popkin spends preparing discovery, he imposes scores of hours of work on postal employees, with no effort made to formulate his questions in ways that would facilitate responses.³

Moreover, Mr. Popkin has never filed any testimony. Instead, unlike most intervenors, he depends completely on discovery to establish a basis to make points on brief.⁴ Thus, while most participants pursue limited discovery to obtain information needed to present their own evidence, Mr. Popkin chooses to pursue discovery with the goal of forcing the Postal Service to make his case for him. When the Postal Service's responses do not support his objectives, Mr. Popkin moves to compel different responses.

Third, Mr. Popkin argues that determining the quality of service received by mailers "requires first knowing what service is actually mandated by regulation or policy to the mailer and then determining the extent to which that level of service is met." Motion at 1-2. The Postal Service submits, however, that the pertinent issue in rate cases is the actual quality of service, not how that quality relates to regulation,

³ Mr. Popkin saves himself time by directing all his interrogatories to the Postal Service, even when he is following up on the testimony or interrogatory response of a particular Postal Service witness. E.g., DBP/USPS-81-82, 85-88. This practice makes it more difficult and time consuming for the Postal Service to assign responsibility for particular questions.

⁴ One consequence of this approach is that Mr. Popkin avoids the rigors of written and oral cross-examination that he imposes on the Postal Service.

guidelines, or policy. Mr. Popkin's discovery could be streamlined markedly if he did not focus so much on establishing the existence of local deviations from national guidelines.

Mr. Popkin uses return receipt service as an example of the need to determine the extent that the Postal Service is conforming to regulation or policy. Motion at 2. However, he fails to note that the Postal Service's proposal in this proceeding recognizes that "problems with the quality of service [for return receipts] imply a lower cost coverage." USPS-T-39 at 135. While the Postal Service has responded to interrogatories comparing actual return receipt service to Postal Service regulations and guidelines, e.g., interrogatories DFC/USPS-68, DBP/USPS-106, such interrogatories contribute little to the record in this proceeding.

Mr. Popkin certainly has prerogatives to complain about service, to the Postal Service's Consumer Advocate or to local and national officials, or, when appropriate, to bring nationwide rate and service complaints to the Commission under separate procedures. Rate cases, however, are far too complicated, and the Commission's and the Postal Service's responsibilities within 10 months are too great, to permit such inquiries to create disproportionate burdens for all involved.

DBP/USPS-19, 20, and 21

Mr. Popkin simply makes a broad assertion that information about minute details of collection practices, as requested in these three questions, is "needed to determine the quality and value of service" for First-Class Mail, Priority Mail, and Express Mail. Motion at 2. With respect to question 19, which includes 23 separate subparts, many of which contain multiple items, Mr. Popkin makes absolutely no effort to explain why information at the level of detail solicited is necessary to make inter-subclass comparisons of value of service. In reality, information at such level of detail is utterly irrelevant to a value of service evaluation as conducted in postal ratemaking

proceedings. Mr. Popkin makes no claim, nor could he, that collection practices have changed materially since the Commission last evaluated value of service in Docket No. R97-1. Question 19 is typical of questions which, if carried to the extremes Mr. Popkin usually pursues, would transform ratemaking proceedings into operational review proceedings.

Questions 20 and 21 follow the same theme as question 19. Mr. Popkin has expressed a continual interest over the years in the Postal Service's collection practices. He has repeatedly sought information from all levels of the Postal Service in contexts that make it abundantly clear that his purpose is to seek to compel changes in postal operations. When Mr. Popkin has been unable to obtain responses from postal officials throughout the organization to his satisfaction, or when he has been told that he will need to provide reimbursement at fees established by the FOIA to obtain information he has requested, he has been known to comment that he will get the information he wants in postal ratemaking proceedings. Question 21, for example, seeking copies of any guidance provided to District Managers with respect to the applicability of the requirements for collection boxes at noncity delivery offices, has been the subject of inquiry and contention by Mr. Popkin, since long before the rate case was initiated. Apparently, Mr. Popkin is seeking to use Commission ratemaking proceedings as a way to circumvent other means of obtaining information, such as the FOIA, which permits recovery of reasonable search and reproduction expenses. The Commission should firmly discourage this behavior. For these reasons, and those stated in the Postal Service's objections, the motion to compel should be denied with respect to questions 19, 20, and 21.

DBP/USPS-22 and 23

Mr. Popkin uses his motion to compel regarding these questions about window service to complain about Saturday delivery and retail service in remote parts of

Oregon. Motion at 2-3. These matters have also been the subject of a long exchange of correspondence between Mr. Popkin and postal officials at all levels. He questions whether "the claimed quality and value of service exist for these mailers." The Postal Service's proposal in this case, however, makes no claims about the quality and value of Saturday delivery and retail service afforded to mailers in remote parts of Oregon. Postal rates are set on a nationwide basis. No matter what rates the Commission recommends in this case, they will not affect how far someone in Oregon has to drive to get window service on a Saturday. Mr. Popkin's own motion to compel thus illustrates how irrelevant questions 22 and 23 are. The motion, moreover, makes no effort to address the Postal Service's objection to question 22, concerning the locus of the burden of proof in the Postal Service's regulations on Saturday retail service. For these reasons, and those stated in the objection, the motion to compel should be denied with respect to questions 22 and 23.

DBP/USPS-24(a-c, e)

Mr. Popkin moves to compel a response to those parts of interrogatory DBP/USPS-24 asking about details of the customer interface with Shipping Online, through which customers access Postal Service information and services. Mr. Popkin has not shown that these details, such as use of credit cards with a post office box address, are relevant to the issues in this proceeding. Even if the questions were focused on broader questions about Shipping Online, the relevance of Shipping Online's quality of service to this proceeding would be missing.

DBP/USPS-25

In his motion to compel a response to this question, Mr. Popkin totally neglects to mention that its subject is the Census mailing recently delivered by the Postal Service, which was characterized by well-publicized problems with mailpiece address quality. Instead, he rather vaguely describes the question as an attempt to obtain information

about the costs incurred as a result of delivering improperly addressed mail. Regardless, the question remains irrelevant. The Census mailing is history. It had no effect on base year costs, and it will have no effect on test year costs. The totally unique circumstances of that mailing may have piqued Mr. Popkin's idle curiosity, but they have nothing to do with the issues in this proceeding. The motion to compel a response to question 25 should be denied.

DBP/USPS-26(c-e)

Mr. Popkin moves to compel a response to those parts of interrogatory DBP/USPS-26 asking about the Philatelic Fulfillment Shipping Center's shipping charge for orders of printed stamped envelopes. Mr. Popkin's Motion fails to address the fact that the Presiding Officer determined that similar questions in Docket No. R97-1 were "beyond the scope of this proceeding and need not be answered." Presiding Officer's Ruling No. R97-1/53 at 7. Mr. Popkin admits, moreover, that his interest is in fishing for new information to try to overturn the Commission's conclusion in Docket No. C95-1 that the shipping charges do not constitute "fees for postal services" under the Commission's purview. PRC Order No. 1075 at 5. Nevertheless, the interrogatories ask for information that should already be available to Mr. Popkin, through the publicly available information for ordering printed stamped envelopes (parts c-d), or through the Postal Service's pleadings in prior proceedings (part e).

DBP/USPS-28-36

The Postal Service opposes the motion to compel with respect to interrogatories 28-36. The Postal Service objected to these interrogatories, among others, on March 20, on the grounds that these detailed, multi-part questions concerning Express Mail

operational procedures were only marginally relevant to the issues of this case, were not reasonably calculated to lead to the production of admissible evidence, and would be unduly burdensome to answer. Furthermore, as referenced in the Postal Service's objection, in Docket No. R97-1 the Presiding Officer ruled that the Postal Service needed to respond only to questions which sought general information about Express Mail Service.⁵ The Presiding Officer went on to state that "generally the operational details of a service are beyond the scope of material issues in a rate proceeding."⁶

Therefore, as found by the Presiding Officer in the previous ratemaking proceeding, such interrogatories generally are not within the bounds of appropriate discovery. Nothing in Mr. Popkin's recent explanations would compel an exception to this standard. Mr. Popkin is requesting specifics of the service to be received by particular types of Express Mail in remote areas. As is evident from Mr. Popkin's Motion, the questions seem to focus on atypical Express Mail deliveries, rather than general quality of service issues that might be relevant to rate case issues. Mr. Popkin's Motion reveals that his motive is to "challenge" Postal Service claims made outside of the rate case. Motion at 3-4. Such an effort is beyond the scope of this proceeding.

Thus, Mr. Popkin fails to show how his interrogatories are relevant in this proceeding. The Presiding Officer's Rulings made in the previous ratemaking proceeding, that such questions need not be answered, should be reaffirmed.

⁵ Presiding Officer's Ruling No. R97-1/80 at 2, 3.

⁶ Presiding Officer's Ruling No. R97-1/53 at 5.

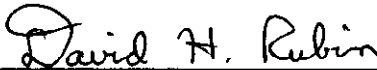
For the reasons stated above, the Postal Service asks the Commission to deny Mr. Popkin's motion to compel responses to interrogatories DBP/USPS-19-23, 24[a-c, e], 25, 26[c-e], and 28-36.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys :

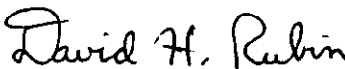
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CERTIFICATE OF SERVICE

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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April 10, 2000