

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

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF DAVID B. POPKIN TO COMPEL RESPONSES TO
INTERROGATORIES DPB/USPS-42, 43, 57, 58, 60-61, 64, 67(D-E), 70(A-K), 71, 72,
74(B-E), 79(N), 80(H-J), 88, 96, 112(A-I), 114, 117(J-K), 118(H-I), 122, 129, 130, AND
131(A) TO 134(A)
(April 19, 2000)

The United States Postal Service hereby opposes the motion of David B. Popkin to compel responses to interrogatories DPB/USPS-42, 43, 57, 58, 60-61, 64, 67(d-e), 70(a-k), 71, 72, 74(b-e), 79(n), 80(h-j), 88, 96, 112(a-l), 114, 117(j-k), 118(h-l), 122, 129, 130, and 131(a) to 134(a).

The United States Postal Service does not oppose the motion of David B. Popkin to compel responses to interrogatories DPB/USPS-62, and 80(a-g). The Postal Service will be providing a response to these interrogatories under a separate filing.

Interrogatory DBP/USPS-42 asks detailed questions about the proper handling of accountable mail sent to a state tax office addressed to the state capital post office but actually delivered to a lockbox operation in another city some 60 miles away and under the jurisdiction of another post office. Mr. Popkin claims that these questions "relate[] to the value of return receipt service." If responses are required to such detailed operational questions because of a general claim that responses would relate to the value of service, then rate proceedings will be expanded into a general review of the Postal Service's operational practices. The level of detail addressed in these

questions is well beyond anything that would usefully contribute to inter-subclass evaluation of the pricing criteria of the Act. Moreover, Mr. Popkin cites to page 3 of Presiding Officer's Ruling No. R2000-1/28, but that ruling did not endorse questioning on operational details. Instead, that ruling simply asserted that matters reserved for postal management may still be the subject of discovery. Finally, Mr. Popkin does not address the Presiding Officer's conclusion in Docket No. R97-1 that "generally the details of a service are beyond the scope of material issues in a rate proceeding." Presiding Officer's Ruling No. R97-1/53 at 5. In that ruling, the Presiding Officer suggested that Mr. Popkin would need to go beyond a general claim that questions relate to the value of service in order to delve in operational details. Mr. Popkin's motion fails to pass that test.

Interrogatory DBP/USPS-43 asks detailed operational information concerning the recent Census Bureau mailings. As the Postal Service stated in its objection, there is no nexus between these questions and the issues which must be addressed in this rate case. Mr. Popkin has failed to overcome the objections stated by the Postal Service, nor has established any justification for the Commission to compel the Postal Service to furnish a response to this interrogatory.

In moving to compel a response to **interrogatory DBP/USPS-57**, Mr. Popkin ignores the Presiding Officer's conclusion in Docket No. R97-1 that these same questions about stamped cards need not be answered. Presiding Officer's Ruling No. R97-1/53, at 5. Instead, Mr. Popkin relies on Presiding Officer's Ruling No. R2000-1/28, at 5. That Ruling, however, was concerned about published sources that might be difficult to locate, such as particular articles in the *Federal Register* and *Postal*

Bulletin. This interrogatory asks for confirmation of items that can be readily checked in the Request and Testimony. The Ruling from Docket No. R97-1 remains as solid precedent. Mr. Popkin can state these assertions about stamped cards in testimony and on brief, and, if they are appropriately applied, the Postal Service will not challenge them. A Postal Service response is not necessary.

Mr. Popkin utterly fails to overcome the Postal Service's multiple grounds for objection to **interrogatory DBP/USPS-58**. Interrogatory 58 asks various questions about philatelic cards featuring images of Bugs Bunny, a Warner Brothers animated character. The Postal Service objected to all subparts of interrogatory 58 on grounds of relevance. As the Postal Service explained in its initial Objection, the information sought in interrogatory 58 is plainly immaterial to the issues before the Commission. While information about pricing of philatelic cards may be of interest to philatelists or hobbyists, it simply has no bearing on the Commission's evaluation of the classification and pricing criteria of 39 U.S.C. §§ 3622 and 3623. Further, as the Postal Service explained in its Objection, it is clear that these questions are aimed at relitigating issues that Mr. Popkin raised in his unsuccessful complaint in Docket No. C95-1. In that proceeding, Mr. Popkin challenged, *inter alia*, pricing for collectible cards on grounds that prices for such items violated 18 U.S.C. § 1721. The Commission dismissed the complaint. See PRC Order Nos. 1075 (issued September 11, 1995) and 1088 (issued November 15, 1995). As this issue was clearly settled by the Commission, Order Nos. 1075 and 1088 operate to estop Mr. Popkin from raising this issue again here.

In his Motion to Compel, Mr. Popkin says absolutely nothing to address the relevance objection, other than to dismiss the objection altogether by offering an

mystifying statement that it is his prerogative to decide how to use the responses on brief or in potential testimony. No legal standard supports Mr. Popkin's position here. That Mr. Popkin may, or may not, use a response in future testimony or on brief does not, *ipso facto*, make the subject matter of the interrogatories relevant. Rather, the governing standard is whether the questions are reasonably calculated to lead to the discovery of admissible evidence. See Rule 25(a) of the Commission's Rules of Practice and Procedure. This standard is not met here. There is simply no nexus between the subject matter at issue in interrogatory 58 and the Postal Service's rate and classification proposals.

Mr. Popkin also fails to overcome the Postal Service's burden ground with respect to subpart (aa) of interrogatory 58. Subpart (aa) requests that the Postal Service provide a complete listing of all postal cards sold since 1971 exceeding the price of postage imprinted or impressed on them. As the Postal Service pointed out in its initial Objection, this would require an exhaustive review of postal philatelic catalogs, which would consume countless hours of search time, assuming that the Postal Service even had historical records to search for responsive information. It is of no moment that the Postal Service has not quantified the burden to Mr. Popkin's satisfaction, for it is self-evident that the question is unduly burdensome. It is, moreover, beyond question that subpart (aa) is so beyond the scope as to not even merit a thorough quantification of the person-hours involved in preparing a response.

Mr. Popkin suggests that subparts (r), (w), and (bb) are not objectionable on grounds that they request legal conclusions based on the unsupported claim that these questions merely request interpretations of postal regulations. Mr. Popkin's

representation does not withstand scrutiny. Neither subpart (r) nor subpart (w) requests an interpretation of postal regulations. To the contrary, subpart (r) attempts to force the Postal Service to identify sources of authority in Title 39, and subpart (w) attempts to force the Postal Service to interpret 18 U.S.C. 1721. Preparing responses requires the preparation of legal conclusions, and this is clearly outside the scope of permissible discovery. See P.O. Ruling No. R97-1/39. Subpart (bb) is misleading because it assumes that the sale of cards above the postage value is either contrary to the DMCS or constitutes a criminal violation under 18 U.S.C. 1721. Again, preparing a response requires the preparation of a legal conclusion in order to dispel these myths.

Interrogatory DBP/USPS-60 requests for revenue and expense information for International Mail for each of the past five years. The Postal Service has already provided a response to this question, which Mr. Popkin deems unsatisfactory. The Postal Service opposes the motion to compel on the grounds of relevance and burden. The question requests information that predates and postdates the base year, and therefore is irrelevant to the issues in this proceeding. It would also be unduly burdensome to the Postal Service if it had to make and provide copies to every party that requested specific portions of records that are available for review. To compel a response to Mr. Popkin's satisfaction would be unduly burdensome, especially given the fact that the responses to these questions are irrelevant to this case.

In a similar vein, **interrogatory DBP/USPS-61** requests revenue and expense information associated with Philatelic Products over the past ten years. The Postal Service opposes the motion to compel with respect to this interrogatory on the same basis as that given for its opposition to DBP/USPS-61.

Interrogatory DBP/USPS-64 requests a breakdown of Priority Mail by volume and revenue showing the percentage of Priority Mail that is transported in each of six specific categories. Postal Service witness Robinson responded, under oath, that the specific, detailed revenue and volume information by transportation subsegment sought by Mr. Popkin is not available. Mr. Popkin now moves to compel production of the specific information sought, regardless of the responsive answer he received, solely on the grounds of his own incredulity: "I find it hard to believe that no data is available on the transportation of Priority Mail. Some, most, or all of my requested data should be available." Popkin Motion at paragraph 9.

It is critical to note that, contrary to Mr. Popkin's implication, the interrogatory in question asked for specific types of revenue and volume information pertinent to particular, detailed transportation segments. The response indicated truthfully, in a complete and responsive manner, that this specific information was not available to be produced to Mr. Popkin. Because the requested information is not available, a "more responsive" answer cannot, and will not, be forthcoming. Mr. Popkin's decision to indulge in needless and unproductive motion's practice based on nothing more than his incredulity has served only to abuse the hard-pressed and limited resources of the Postal Service and the Commission. The motion to compel an additional response to interrogatory 64 must be denied.

Interrogatory DBP/USPS-67(d-e) asks the Postal Service to list any and all exceptions to particular statements made in the Domestic Mail Manual and Postal Operations Manual. The Postal Service restates its objection that it should not be required to confirm or list exceptions to what is stated in these documents, as they

speaking for themselves. Mr. Popkin states that the burden claim has not been quantified. Popkin Motion at 3. However, the burden of going through both voluminous manuals looking for any and all exceptions far outweighs any value such trivia could provide to these proceedings, especially since it has not been shown how such information relates to the costing and pricing issues before the Commission in this proceeding. Therefore, the Postal Service's objection to this interrogatory should be granted.

Interrogatory DBP/USPS-70(a-k) requests the Postal Service to provide dated information about operational matters with little or no relevance to this proceeding. Mr. Popkin's Motion to Compel does not state any reason why the Postal Service should respond other than the fact that the burden claim has not been quantified, and because the Postal Service has admitted that these questions have at least a little relevance. Popkin Motion at 3. However, Mr. Popkin has not stated why P.O. Ruling No. R97-1/53 at 4 should not be controlling. This is probably because he has no reasonable answer that could justify his motion to compel. As initially stated in the Postal Service's objection, these exact questions have been asked and ruled upon in Docket No. R97-1. Specifically, in Docket No. R97-1, the Presiding Officer ruled that questions (a-k) were too attenuated, and the Postal Service was not required to respond. Since Mr. Popkin has failed to show how these questions are now relevant to this ratemaking proceeding, when it was determined not to be so in the past, his motion to compel should be denied.

The Postal Service also opposes responding to **interrogatory DBP/USPS-71** on the grounds of relevance and burden. According to Mr. Popkin, these questions relate to the value of service of First Class Mail as to the determination of what mail will be delivered overnight, second day, and third day. He states that similar interrogatories

relating to the value of service have been previously asked and responded to. Popkin Motion at 3. The Postal Service stands by its initial objection because the information he seeks is not relevant to this proceeding. Mr. Popkin seeks internal operating and management policies and practices that are well beyond the Commission's purview in an omnibus postal rate case. As previously stated, a response from the Postal Service does not constitute a waiver of the Postal Service's right to seek protection from the burden of providing such immaterial and irrelevant information in the future.

Interrogatories DBP/USPS-72 and 74(b-e) provide yet further examples of irrelevant questions. In his Motion to Compel, Mr. Popkin has again failed to state how interrogatory 72 is now relevant to ratemaking proceedings when the exact same question was determined to be irrelevant in the previous rate case. As stated in the Postal Service's objection, the Presiding Officer ruled that interrogatories requesting documents relating to the use of air transportation and First Class Mail were irrelevant and burdensome. See Docket No. R97-1: DBP/USPS-8, and P.O. Ruling R97-1/53 at 4 and 5. With respect to interrogatory DBP/USPS-74(b-e), the Postal Service refers the Commission to its original objection filed on March 30, 2000. The question requests for information regarding the extent to which mail is delivered on time to federal agencies. This question has no relevance at all with the issues which must be addressed in this rate case. Any studies, should they even exist, or methods relating to EXFC have no bearing on the issues relevant to this proceeding, nor are the questions calculated to lead to the discovery of any admissible evidence. There is not one rate or classification determination in this proceeding that will be affected to any degree by any information which could be produced in response to this question. In his motion to compel, Mr.

Popkin has failed to overcome the objections stated by the Postal Service. He has also failed to establish any justification for the Commission to compel the Postal Service to furnish a response to this interrogatory.

Interrogatory DBP/USPS-79(n) asks whether a specific practice in completing return receipts is permissible. Witness Davis has responded that he "do[es] not know the extent this may be permissible." Mr. Popkin's motion asks for a more responsive answer, as does his interrogatory DBP/USPS-174, filed April 12, 2000. Since Mr. Popkin is directing his inquiry at witness Davis' cost study, it seems that his knowledge is what is important. Witness Davis is willing to check into this alleged practice more, and revise his response accordingly.

Mr. Popkin claims that he needs a more responsive answer to interrogatory **DBP/USPS-79(n-r)** in order to "complete the last open cost data item in my evaluation of return receipt costs." Based on Mr. Popkin's approach in previous dockets, the Postal Service is concerned that he will present his entire cost analysis on brief. The Postal Service believes that it would be denied due process if forced to respond to such an analysis in the brief time provided for preparing reply briefs, and without the benefit of discovery.

With respect to interrogatory **DBP/USPS-80(h-j)**, the Postal Service objected on the basis that the questions ask the Postal Service for a legal conclusion, and are not calculated to lead to the discovery of any admissible evidence. In Popkin's Motion to Compel, Mr. Popkin does not state anything to dispute this. Therefore, the Motion to Compel should be denied.

Interrogatory DBP/USPS-88 asks about rounding constraints used for special

services. Mr. Popkin is dissatisfied with witness Mayo's reference to the "Fee Design" sections of her testimony, even though her testimony presents a substantial amount of information about the use of rounding constraints for special services. The cited testimony provides all available information on Mr. Popkin's questions, and covers all parts of his question except, in some cases, reasons for selecting a rounding constraint, and the "rate" that would have been used if there were a one-cent rounding constraint. Alternative fees reflecting different rounding constraints have not been developed, and since rates and fees are developed in relation to one another in preparing a rate case, alternatives cannot be developed in a vacuum. Witness Mayo's response is quite adequate given the general nature of Mr. Popkin's interrogatory.

Interrogatory DBP/USPS-96 contains 12 subparts concerning postal procedures and networks. Mr. Popkin moves to compel more detailed information than provided in the Postal Service's response. The Postal Service stands by its responses as being adequate. The responses are the same for every subpart and the minute operational details that Mr. Popkin is requesting are irrelevant and too burdensome to produce. Given the size of the Postal Service organization, it is unreasonable to expect the Postal Service to investigate every internal and local operational detail of its procedures. Therefore, the motion to compel should be denied.

With respect to **interrogatory DBP/USPS-112(a-I)**, Mr. Popkin moves to compel more information about the method used by the Postal Service in 1998 to determine facility rental costs, for selection of a few test facilities for movement to a different fee group. See USPS-T-40 at 10-11. He asks for similar information in his interrogatory **DBP/USPS-146(a)**, submitted under seal on April 10, 2000. The Postal Service

maintains its objection to providing details of a costing approach used more than a year before the filing of this rate case. However, it turns out that the cost per square foot input to witness Yezer's analysis for Englewood Cliffs is the same as the cost used in the 1998 evaluation. In response to Mr. Popkin's interrogatory DBP/USPS-146(a), witness Yezer will provide Mr. Popkin, under protective conditions, the information that the Postal Service believes he requests, by explaining how witness Yezer's cost per square foot input was developed for Englewood Cliffs.

With regard to interrogatory DBP/USPS-114, Mr. Popkin's motion states that the proposed fee groups for two particular ZIP Codes are not included in the listing he has obtained under protective materials. If so, then the proposed fee groups are not available for those ZIP Codes, either because they do not provide post office box service, or because they are ZIP Codes that will be assigned as part of the implementation process, as witness Kaneer will address in his response to interrogatory DBP/USPS-152(f). Interrogatory DBP/USPS-114(b) asks whether the data used by witness Yezer was "before or after the major renovation [of Tenafly, NJ] that was completed recently." The Postal Service has provided the information it has, which is the year (FY 1998) of the input data used by witness Yezer. The Postal Service does not know when the particular renovation referred to by Mr. Popkin was completed, although Mr. Popkin's use of "recently" suggests he might be able to determine if the renovation was before or after FY 1998. In any case, the facts of one particular facility are not material to an analysis of witness Yezer's analysis. One can argue that the data do not reflect renovations after any given date, without requiring the Postal Service to

check when one of its more than 30,000 facilities was renovated.¹

Mr. Popkin moves to compel a responsive answer to interrogatories **DBP/USPS-117(j-k) and 118(h-l)**, which ask about the costs of processing claims on insured and registered mail items, and the relationship of these costs to the value of the item. In response, witness Davis reported his lack of awareness of any studies of those matters. As the accountable mail cost study witness, witness Davis is likely to know of any such studies if they exist; he has also checked with other knowledgeable postal employees. Mr. Popkin's motion refuses to accept the fact that the costs he asks about are not isolated by Postal Service data systems, and that a judgment about whether claims processing costs depend on the value of the item would require a study. The Postal Service believes witness Davis' response to these interrogatories is fully responsive.

With respect to **interrogatory DBP/USPS-122**, which concerns collection times at collection boxes, the Postal Service stands by its initial objection filed on April 3, 2000. As stated in its objection, this interrogatory has no bearing on the costing and pricing issues before the Commission in this proceeding. This is completely an operational matter with no relevance to ratemaking. Therefore, the Postal Service considers that it has no obligation to respond to this question. The motion to compel be denied.

Mr. Popkin's motion to compel a response to interrogatory **DBP/USPS-129** admits that the Postal Service has provided information on his operational concerns

¹ The Postal Service believes that the information it provided in response to interrogatory DBP/USPS-114 is more useful than the specific responses Mr. Popkin desires, because the Postal Service's responses can be applied to all ZIP Codes and facilities, rather than to just those noted by Mr. Popkin.

about certified mail processing in response to interrogatories DBP/USPS-3 and DFC/USPS-T10-8. But he wants more information to "evaluate the extent of proper processing of Certified Mail and therefore the value of the service." Motion at 6. The Postal Service believes that it is already providing all information that might be relevant to this proceeding. The Postal Service has answered DBP/USPS-3 and DFC/USPS-T10-8 (22 total parts) which covered certified mail processing and costs, and intends to provide some additional information in response to DBP/USPS-165. The Postal Service has provided more information than is necessary for this proceeding already, and Mr. Popkin should be able to draw conclusions about the "extent of proper processing of certified mail" without burdening the Postal Service further. The Postal Service does wish to correct its reference in its response to DBP/USPS-3(g) to Form 3849.

With regard to interrogatory DBP/USPS-130, Mr. Popkin claims that Postal Service counsel advised him that any Inspection Service or Inspector General audit reports could be obtained by discovery or through FOIA. Counsel did not say that copies could be obtained, but rather that they could be requested through FOIA or formal discovery. Mr. Popkin should be aware that neither formal discovery nor FOIA provide an unconditional means to obtain information. Instead, Mr. Popkin should be aware that discovery is subject to objection, and does not provide a means to obtain privileged material or material that would be burdensome to produce. Rather than simply stalling, as Mr. Popkin suggests, the Postal Service does not believe that the requested reports are proper subjects of rate case discovery, and stands behind all the grounds stated in its objection, to which Mr. Popkin's motion generally does not

respond.

Mr. Popkin's motion to compel responses to part (a) of interrogatories **DBP/USPS-131 to 134** argues that the Postal Service is obligated to confirm the validity of letters that Mr. Popkin provides during cross-examination of the Postal Service. Mr. Popkin ignores precedent that was fully litigated in Docket No. R97-1. In that proceeding, Douglas Carlson moved to introduce into evidence letters from postal employees after oral cross-examination of a Postal Service witness. The Presiding Officer determined that:

the appropriate point for introduction of the letters is during Carlson's (or Popkin's) direct case/rebuttal testimony. Due process mandates that all parties have a reasonable opportunity to consider the purported evidence, as well as an opportunity to conduct cross-examine on the same.

Presiding Officer's Ruling No. R97-1/70, at 3-4. Mr. Carlson decided to forgo the opportunity to introduce the letters in his testimony, and instead tried to use the letters to conduct written cross-examination on the Postal Service. The Presiding Officer denied Mr. Carlson's motion to compel responses, based on timeliness concerns. Presiding Officer's Ruling No. R97-1/89, at 3. Based on precedent, due process, and burden concerns, the Postal Service should not be required to authenticate letters that Mr. Popkin received, and has in his possession.²

Mr. Popkin again argues that the Postal Service is discriminating against Mr. Popkin in its approach to his discovery. Motion at 7. We are treating Mr. Popkin differently only in deciding how much additional help to provide him, compared to other

² The Postal Service also has not seen the outgoing letters which Mr. Popkin sent, or knows what other correspondence Mr. Popkin has had on these matters.

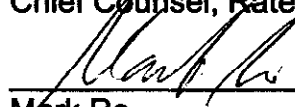
participants, since he has chosen to litigate this case without a willingness to come to Washington, DC, or hire local counsel. Other parties receive similar responses and understand that they have to do some of the work.

Accordingly, the Motion To Compel should be denied.

UNITED STATES POSTAL SERVICE

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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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