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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. R2000-1/56

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING ON
DAVID B. POPKIN'S MOTION TO COMPEL RESPONSES TO
DBP/USPS-19-23; 24(A)-(C) AND (E); 25; 28-36; AND 98(B)-(E)

(Issued May 2, 2000)

This ruling addresses David B. Popkin's motion to compel responses to certain interrogatories directed to the Postal Service.¹ Most of the interrogatories include multiple subparts. No. 19, for example, includes at least 23 separate statements the Service is asked to address, either through confirmation or explanation. Many of the questions inquire into highly specific operational details, and some pertain to local conditions or situations. The Service has filed objections to answering the interrogatories in issue, as well as a response to the motion to compel.²

Background. Discovery rulings in a previous omnibus rate proceeding have emphasized that reasonable attempts would be made to facilitate participation by individuals. See P.O. Ruling Nos. R97-1/53 and -1/80. At the same time, the record must be kept manageable and undue burdens cannot be imposed on respondents. It

¹ David B. Popkin Motion to Compel Responses to DBP/USPS Interrogatories DBP/USPS-19-23, 24(a)-(c), 25, 26(c)-(e), 28-36, and 98(b)-(e), filed April 3, 2000, (Popkin Motion).

² Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-19-23, 24(a-c, e), 25, 26(c)-(e), and 28-36), March 20, 2000, (Objection); see also Objection of the United States Postal Service to Popkin Interrogatories DBP/USPS-98(b)-(e), March 28, 2000, (Objection to Question 98). 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; and Response of United States Postal Service to 98(b)-(e), April 6, 2000.

therefore follows that not all lines of inquiry will be allowed nor will all detailed requests be appropriate; a reasonable balance must be struck.

Many interrogatories at issue here revisit areas of inquiry that the rulings referred to above effectively settled with respect to the level of detail requested. In particular, many of the questions seek highly specific operational or managerial details about collection practices, about Saturday service, and about Express Mail. In brief, to the extent Mr. Popkin again inquires into these types of matters, the Service is not required to respond in detail. Where it is reasonable to infer that general information in the Domestic Mail Manual is sought or may be useful and relevant, the Service is generally directed to provide it.

No. 19 (23 subparts), 20 and 21. Question 19 seeks confirmation of numerous assertions regarding collection policy and practices that Mr. Popkin associates with determining “the value to the customer for the ease and use of the collection system for First-Class Mail and other categories that may be mailed in collection boxes.” For example, No. 19(a) seeks confirmation that: “Consistent with existing transportation, all collections should be made as late as possible.” In No. 19(f), the statement is:

All collections should be made as late as possible to meet the transportation. This applies to all collections on all days of the week. For example, if the transportation leaves a post office at 6:15 PM, the last collection in front of the post office should not be 5 PM but should be made some 15 or 20 minutes before the departure. This contemplates that the office is staffed and would not apply where the mail was picked up by a contractor from an “empty” post office.

In addition, some subparts (such as Nos. 19(t), (u) and (v)) inquire into signage, box labels and decals, and box locations.

In subpart (a) of question 20, Mr. Popkin asks for copies of any Headquarters directives that have been furnished to the field with respect to collection requirements in the past three years. In subpart (b), Mr. Popkin asks for copies of any Inspection

Service or Office of Inspector General (OIG) audits on collection service that have been conducted in the past three years. Question 21 asks for copies of any guidance to district managers regarding applicability of collection box requirements at noncity delivery offices.

Arguments. The Postal Service objects to Question 19, in its entirety, on grounds that it lacks materiality and relevance. In particular, the Service notes that the question poses 23 statements relating to “the ideal conduct of very specific operational practices with respect to mail collection and collection boxes.” Objection at 1. The Service further asserts that determining operational policies and the Service’s compliance with them are not the purpose of rate cases, and that the level of detail Mr. Popkin seeks is “manifestly well beyond anything that would usefully contribute to inter-subclass evaluation of the pricing criteria of the Act.” *Id.*

The Service’s objection to questions 20 and 21 notes that these questions follow the same theme as question 19. Objection at 4. In particular, with respect to the requested search and production of all audits that concern collection activities, the Service objects on grounds of relevance, burden, overbreadth, commercial sensitivity, and privilege. It also notes that some of the audits may have no relevance to issues in this proceeding. Moreover, the Service says the audits are identified only generally in semiannual indices. It says the burden of identifying which audits relate to “collection services” would be undue, and estimates that compliance would entail 15 to 25 hours. In addition, the Service notes that the documents cannot be publicly disclosed if they contain proprietary and commercially sensitive information. Finally, it says the documents could contain attorney-client, attorney work product, predecisional, and law enforcement-related communications that are also subject to a number of privileges. Objection at 2.

However, the Service says it already has provided semiannual OIG reports in USPS LR-I-181 in response to interrogatory OCA/USPS-7. It claims that these reports, along with the Postal Service’s response to Interrogatory DFC/USPS-25, provide an

index of audits by both the Inspector General and Inspection Service since 1997, and should provide ample information about the audit activities of the OIG and the Inspection Service for purposes of this proceeding. Objection at 2-3. The Service also notes, among other things, that correspondence prior to the rate case indicates Mr. Popkin has an independent interest in pursuing the Postal Service's collection policies and practices in a rate case forum.

In support of his request for compelled responses, Mr. Popkin contends that questions 19, 20 and 21 relate to determining the quality of service associated with collecting mail at collection boxes throughout the country. He claims he needs the requested information to determine the quality and value of service that exists for First-Class Mail, Priority Mail and Express Mail. Mr. Popkin also invokes 39 U.S.C. § 3622(b) regarding the value of the mail service actually provided each class or type of mail service to both the sender and recipient, including but not limited to the collection, mode of transportation, and priority of delivery. Popkin Motion at 2.

The Service asserts that with respect to question 19, Mr. Popkin makes no effort to explain why information at the level of detail solicited is necessary to make inter-subclass comparisons of value of service. It says information at this level of detail is "utterly irrelevant" to a value of service evaluation as conducted in postal ratemaking proceedings. Objection at 3-4. The Service further says 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. *Id.*

Decision. With respect to question 19 and 21, the aforementioned rulings in Docket No. R97-1 established that questions about highly specific or detailed operational practices or procedures may be unreasonably burdensome in many circumstances, given that these are often left to the Postal Service's managerial discretion to implement or develop. At the same time, some inquiry into operations may be appropriate when questions arise about application of the pricing criteria. Therefore, a blanket prohibition against operational details is not necessarily appropriate.

Moreover, personal interest in an issue does not necessarily preclude a line of inquiry. However, matters of purely personal interest or concerning purely local conditions are often not relevant in an omnibus proceeding, and are therefore objectionable on that basis. Mr. Popkin has not shown sufficient nexus between the detail he requests, and the development of relevant evidence to warrant compelling answers.

In the circumstances here, I find that the material provided in USPS-LR-I-181 provides a partial response to Question 20. The Service is directed to provide the audit report issued in connection with Case No. 043-1190214-PA(2), Collection Management System, Denver, CO 94099 identified in the FY 1997 OIG Semiannual Report to Congress, Volume 1, at page 49, as this appears to relate to collection. Should Mr. Popkin determine that there are other collection audits cited in the library reference that are also clearly on point, he may request them.

Questions about Saturday service: No. 22 (two subparts) and No. 23 (eight subparts). Subpart (a) of question 22 asks why postal regulations address Saturday retail window service by requiring a demonstration that there is a need for it, rather than considering whether Saturday service is *not* needed. Subpart (b) asks for copies of any headquarters directives to the field regarding whether or not Saturday service should be provided. In No. 23, Mr. Popkin seeks confirmation of statements that he says are related to an evaluation of the level of service that is being provided at post offices on Saturday, particularly those which do not have retail window service that day. Among other things, these include assertions regarding access to post office boxes on Saturday; access to oversize items and accountable mail; the posting and wording of signs; and presentation of mail weighing more than one pound.

Arguments. The Service also considers question 22 irrelevant, further noting that the “tenor . . . makes it abundantly obvious that Mr. Popkin has an understanding of what the regulations are and how they operate; via this argumentative interrogatory he seeks a change in the regulation to shift the Postmaster’s burden of proof regarding the provision of Saturday window service.” Objection at 3. The Service notes that question

23 is similar to No. 19, except that it relates to post office services on Saturday, rather than operational collection practices. *Id.* at 4.

Decision. The nature of these questions and the level of detail requested place these interrogatories outside the realm of appropriate discovery in this proceeding. Therefore, the Service will not be required to provide a response.

No. 24 (multiple subparts)—Shipping Online. In subpart (a) of question 24, Mr. Popkin asks for confirmation, in connection with Shipping Online, that customers who have their credit cards billed to a post office box address may not use the service. He also asks for an explanation of the rationale for this requirement. Subpart (b) seeks confirmation that the following notice appears in the shipping process: “Note: Insurance is provided by a non-USPS carrier.” Subpart (c) asks for confirmation that the name of the insurance carrier is U-Pic. Subpart (d) asks for the rates charged for this insurance and variations that exist between this service and that which is provided by the Postal Service. Subpart (e) asks for an explanation and discussion of any items that cannot be confirmed.

Arguments. The Postal Service asserts that the first three parts of this question focus upon details “of the customer interface with Shipping Online, a means by which customers access Postal Service information and services.” Objection at 4. It contends that these operational details have no bearing on the issues in an omnibus rate case. *Id.* at 4. However, the Service says the last part “builds upon Mr. Popkin’s apparent conclusion that Shipping Online offers the insurance from another provider, and asks a relevant question about how this insurance compares to Postal Service insurance.” It says a response will be provided to this question.

In support of compelled responses, Mr. Popkin says this interrogatory relates to the quality of service that Shipping Online™ customers receive. Popkin Motion at 3. In particular, he says: “By my utilizing the high value of service Post Office Box for my address on my credit card, I was denied the ability to use, and obtain the benefits of this service.” *Id.*

Decision. Postal Service witness Mayo has supplied a response to subpart (d). See Response of United States Postal Service Witness Mayo to Interrogatories of David B. Popkin, Redirected from the Postal Service (DBP/USPS-17, 24(d), 26(A-B), 27(A-), S-U) and 40), March 24, 2000. While this response may not provide Mr. Popkin with all the details he would like, it appears that is the extent of the information the Service has on this topic.

With respect to the other subparts, I note that Shipping Online is not in issue in this proceeding. Therefore, I see no benefit in requiring the Service to provide details that are clearly attenuated to any issue in this proceeding, such as the name of the insurance carrier. However, there are two aspects of the motion practice on this topic that have the potential for creating confusion. One is the statement, in the Service's objection, regarding Mr. Popkin's "apparent conclusion" regarding an insurance carrier. The other is Mr. Popkin's statement that his question relates to the quality of service that Shipping Online customers receive. It is my understanding that Shipping Online is not as a special service per se, but is a software package that offers users of certain classes of mail, such as Express Mail and Priority Mail, a variety of billing, tracking and other options. Thus, the Service is requested to provide, in connection with this interrogatory, a statement for the record indicating whether Mr. Popkin's "apparent" conclusion is also a correct conclusion, and providing a complete description of Shipping Online, including a statement clarifying that it is or is not a special service.

No. 25 – recent Census Bureau mailing; other matters. Most subparts of this question inquire into the recent Bureau of Census mailing, which was widely reported in the media to have had incorrect address information; however, several subparts also ask about automated processing in general. The Census-specific subparts ask about any additional costs incurred, about the type of ZIP Code, the nature of the error, whether there was a barcode, and the length of the barcode.

One of the general questions asks whether a mailpiece that has a correct barcode will be processed to the barcoded address regardless of the printed address appearing on the mail. Another asks, for mail that has a correct barcode, whether it will be processed to the barcoded address regardless of the printed address appearing on the mail. The last one asks for an explanation of the algorithms used when incorrect addresses are analyzed on automated equipment to arrive at a correct barcode for the mail. It also specifically asks whether a letter addressed to Englewood NY 07631 would be sent to New Jersey since two out of the three parts of the address indicate that or would it also check to see that the street address was also a valid Englewood NJ address.

Arguments. The Service objects to the lack of nexus between these questions and the issues in this case. *Id.* at 4-5. However, Mr. Popkin says this interrogatory relates to an effort to determine the costs that may have been incurred by the Postal Service as a result of delivering improperly addressed mail. He says that information on the types of barcodes and whether they match the correct or incorrect address is needed to fully evaluate the potential for added costs as well as the evaluation of the costs and methods of delivering other presorted automated First-Class Mail. *Id.* at 3.

Decision. This proceeding is not the appropriate forum for an extensive review of problems associated with the Census mailing, nor are many of the details sought in this interrogatory of any relevance. Thus, the Service will not be required to provide a response to subparts (a)–(f). On the other hand, subparts (g), (h), and (i) appear to address matters that are arguably relevant to aspects of the Service’s automation program in issue in this proceeding. It would enhance the record if the Service provides a general response to these subparts. However, in connection with subpart (i), it will suffice if the Service identifies or provides a brief explanation of the algorithms; the Englewood addressing issue need not be covered.

No. 26(c)–(e) — stamped envelopes. This series of questions pursues several issues related to the shipping and handling charges assessed on purchases of printed stamped envelopes. The Service cites lack of relevance as its reason for objecting to the referenced subparts of this interrogatory. It notes that these questions are similar to questions Mr. Popkin asked in Docket No. R97-1 (in DPB/USPS-54(kk-pp)), to which the Postal Service objected. The Service notes that it was determined that the information at issue was beyond the scope of the Docket No. R97-1 proceeding and need not be answered. *Id.*, citing P.O. Ruling No. R97-1/53 at 7. In addition, the Service says that Docket No. C95-1 has affirmed that this shipping and handling charge may be applied to orders for printed stamped envelopes even though the charge is a philatelic charge not subject to Commission review. *Id.* at 5, citing PRC Order No. 1075 at 5. It says this determination provides a complete response to Mr. Popkin's questions.

Popkin's motion to compel. Mr. Popkin says this interrogatory relates to the requirement that purchasers of printed stamped envelopes "pay an unregulated shipping and handling charge" in addition to the rates as approved. He says these interrogatories are an attempt to confirm that the practice that existed in Docket No. R97-1 is still in effect and to determine any new information that might afford a different decision. *Id.* at 3.

Decision. The debate on the topic at issue here — additional shipping charges for philatelic products — was essentially settled in a previous proceeding. I find no reason to reopen that matter, nor any valid reason to believe that confirmation that the practice of assessing additional shipping charges on philatelic sales is needed.

Nos. 28 through 36. Both Mr. Popkin and the Service generally address these questions, which relate to various Express Mail matters, as a group; therefore, they are reviewed together. Question No. 28(a) asks whether the conditions that apply for refunding postage also apply to Second Day Express Mail when delivery is not accomplished by the second day. No. 28(b) asks for a description of the types of

activities that constitute “detention for law enforcement purposes” and for a citation to the DMM section authorizing that additional condition. Questions 29 and 30 ask about facilities where Express Mail offerings may be mailed and about the facilities to which they may be addressed. Question 31, with five subparts, asks about matters such as cutoff times and acceptance times.

Questions 32 and 33 further pursue issues of timeliness of delivery, including matters such as the time of deposit, window hours, delivery cutoff times, and asks for application of these assumptions to numerous mailing scenarios. Question 34 seeks, in subpart (a), confirmation that Express Mail will be delivered 365/6 days a year. In subpart (b), it asks for confirmation that Express Mail may be addressed to any authorized type of address.

Question 35 seeks confirmation of certain statements regarding when postage refunds may be obtained for Express Mail articles, citing situations when there is a failure to deliver on time. Question 36 asks, with respect to Express Mail, whether regulations or Headquarters directives mandate various standards related to delivery and collection.

Arguments. The Service objects to Questions 28-36 on grounds that the information sought appears to have only marginal relevance to the issues of this case; that the interrogatories are not reasonably calculated to lead to the production of admissible evidence; and undue burden. *Id.* at 5-6. In particular, the Service notes that this series of questions is similar to DPB/USPS-10-12 posed by Mr. Popkin in Docket No. R97-1. *Id.* at 6. It notes that in that case, the Presiding Officer ruled that the Postal Service needed to respond only to questions which sought general information about Express Mail service. With respect to the remaining questions, the Presiding Officer concluded that “generally the operational details of a service are beyond the scope of material issues in a rate proceeding.” *Id.* at 6, citing P.O. Ruling No. R97-1/53 at 5; P.O. Ruling No. R97-1/80 at 2-3. Therefore, the Service says that in accordance with these rulings, the interrogatories are not within the bounds of appropriate discovery. It

further claims the information sought is of little relevance and is not reasonably calculated to lead to the production of admissible evidence, and responding to them would pose an undue burden on the Postal Service. *Id.* at 6.

Mr. Popkin contends that this series of interrogatories relate to the quality of service that Express Mail users receive. He challenges the validity of characterizing Express Mail as a "premium" service if guaranteed performance standards are not met.

Decision. As with questions related to collection, I find that these interrogatories generally seek detail that is not a legitimate end of discovery. It would suffice if the Service would provide, for ease of reference in the record, a reference to provisions in the Domestic Mail Manual that address Express Mail service offerings referred to in this series of interrogatories.

*No. 98(b)-(e).*³ Subpart (b) asks for a list of the categories of Postal Service managers (other than the installation head) whose compensation is affected by the results of the External First Class (EXFC) measurement system. Subpart (c) asks for an explanation of the method by which the compensation is tied to the EXFC results. Subpart (d) asks whether all EXFC results are utilized or whether it is limited to the overnight score only. Subpart (e) asks for an explanation if it is limited to only overnight.

Arguments. The Service says these questions ask detailed questions concerning the exact manner in which EXFC scores are used as a basis for compensation for postal management employees. Objection to Question 98 at 1. It considers the requested material immaterial and irrelevant to the issues in this

³ DBP/USPS-98(a) asks: "Please confirm, or discuss and explain if you are not able to confirm, that compensation for many Postal Service Installation Heads is affected by the EXFC results for their area of responsibility."

proceeding. Accordingly, it incorporates by reference its February 25, 2000, objection to DFC/USPS-22(e).⁴

Mr. Popkin supports his request by saying that the interrogatory inquires into the extent that EXFC results are tied to postal management salaries, and notes that he suspects that value of service is being affected "by the overwhelming desire to have high EXFC scores."


Decision. The EXFC program referred to here is an ongoing survey that provides independent measurement of First-Class Mail service from deposit in the collection box to delivery. While Mr. Popkin may be correct that the compensation certain postal managers receive is linked in part to EXFC results, it is not clear that specific information about how this is determined is material and relevant to an evaluation of "value of service" in this proceeding. Accordingly, it would not add to the record to require the Service to provide the details requested here. Moreover, as much information about EXFC is readily available, I will not ask the Service to provide general details. In this instance, it also appears that the concern that the program allows (or invites) manipulation, is not the province of the Commission.

RULING

1. David B. Popkin's Motion to Compel Responses to DBP/USPS-19-23; 24(a)-(c) and (e); 25; 26(c)-(e); 28-36; and 98(b)-(e) is disposed of as follows:
 - a. with respect to No. 19, it is denied;

⁴ This interrogatory asks for a description of the EXFC performance goals that affect postal managers' compensation and the extent to which each goal affects their compensation.

- b. with respect to No. 20(a) it is denied;
 - c. with respect to No. 20(b) it is granted to the extent that the Service is directed to provide a copy of the audit report referenced in the body of this ruling;
 - d. with respect to No. 21, it is denied;
 - e. with respect to No. 22, it is denied;
 - f. with respect to No. 23, it is denied;
 - g. with respect to No. 24(a-c) and (e) it is granted in part, to the extent that the Service is requested to provide a complete description of Shipping Online;
 - h. with respect to No. 25, it is denied with respect to (a)-(f) and granted in part with respect to (g)-(i).
 - i. with respect to No. 26(c)-(e), it is denied;
 - j. with respect to No. 28 (a) it is denied;
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- k. with respect to No. 28(b), the Service is to provide a brief description of the activities that are considered "detention for law enforcement purposes" and to provide a corresponding citation to Domestic Mail Manual, if one exists;
 - l. with respect to No. 29 – 36, it is granted to the extent the Service is directed to provide any pertinent citations to the Domestic Mail Manual; and
 - m. with respect to No. 98(b)-(e), it is denied.



Edward J. Gleiman
Presiding Officer