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POSTAL RATE COMMISSION
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PRESIDING OFFICER'S
RULING NO. R2000-1/59

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

Postal Rate and Fee Changes

Docket No. R2000-1

RULING CONCERNING DAVID B. POPKIN'S
APRIL 12TH MOTION TO COMPEL

(May 10, 2000)

On April 12, 2000, David B. Popkin (Mr. Popkin), a limited participator, filed a Motion to Compel responses to some 28 interrogatories or parts thereof.¹ The Postal Service filed its opposition to the motion on April 19, 2000.² With one exception, the interrogatories will be addressed seriatim. The exception concerns a set of duplicate interrogatories, *DBP/USPS-57 et al.*, served previously by Mr. Popkin in Docket No. R97-1.

DBP/USPS-42. This interrogatory requests an explanation of proper handling procedures concerning "completion of Return Receipt with respect to accountable mail sent to a tax office addressed to a state capital post office but actually delivered to a lockbox operation in another city some 60 miles away" Mr. Popkin argues that his inquiry, including the use of a rubber stamp signature, relates to the value of return

¹ Motion to Compel Responses to *DBP/USPS* Interrogatories *DBP/USPS-42, 43, 57, 58, 60, 61, 62, 64, 67[d-e], 7-[a-k], 71, 72, 74[b-e], 79[n], 80, 88, 96, 112[a-i], 114, 117[j-k], 118[h-i], 122, 129, 130, 131-134[a]*, April 12, 2000 (Motion).

² Opposition of the United States Postal Service to Motion of David B. Popkin to Compel Responses to Interrogatories *DBP/USPS-42, 43, 57, 58, 60, 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 (Opposition). In its Opposition, the Postal Service indicated that it no longer opposed and would submit responses to interrogatories *DBP/USP-62* and *80(a-g)*.

receipt service.³ The Postal Service contends that rate proceedings would become a forum for a general review of Postal Service's operational practices if discovery were permitted on this issue. Further, the Postal Service argues that details sought are unrelated to the pricing criteria of the Act.

Mr. Popkin has failed to demonstrate the relevance of the operating procedures applicable to his rather particularized inquiry to this proceeding. His general claim of value of service is too attenuated to pricing issues to require the Postal Service to respond. Hence, the Postal Service's objection is sustained.

DBP/USPS-43. This interrogatory seeks certain information concerning the recent Bureau of Census mailing, *e.g.*, whether such mail was mailed as First-Class Mail endorsed Return Receipt Requested and whether such mail was processed according to established procedure. In support of his motion, Mr. Popkin cites to his previous motion concerning a related interrogatory, *DBP/USPS-25*.⁴ For its part, the Postal Service argues that the questions are unrelated to issues to be addressed in this proceeding.⁵

Presiding Officer's Ruling (POR) R2000-1/56, issued May 2, 2000, is on point. POR R2000-1/56 denied, as irrelevant, inquiries concerning the Census mailing.⁶ Likewise, Mr. Popkin's motion to compel a response to *DBP/USPS-43* is denied.

DBP/USPS-57, 58, 70(a-k), and 72. These interrogatories share a common bond with Docket No. R97-1. Mr. Popkin propounded essentially the same interrogatories to the Postal Service in Docket No. R97-1, and each was subject to motions practice.⁷ POR R97-1/53, October 30, 1997, is controlling.

³ Motion at 1.

⁴ Motion at 1.

⁵ Opposition at 2.

⁶ POR R2000-1/56 at 8. While that order did direct the Postal Service to respond to certain more generalized inquiries determined to be "arguably relevant," that distinction does not pertain here.

⁷ Compare *DBP/USPS-57, 58, 60, 61, 70(a-k), and 72* in Docket No. R2000-1 with *DBP/USPS-15, 16, 18, 19, 7 (a-k), and 8(x-ff)*, respectively, filed in Docket No. R97-1. Any minor variations in the wording

Mr. Popkin's motion to compel a response to these interrogatories is denied. See POR Docket R97-1/53 at 5 re DBP/USPS-57 & 58,⁸ at 4 re DBP/USPS-70(a-k), and ordering paragraph at 8 re DBP/USPS-72.

DBP/USPS-60, 61. In these interrogatories, Mr. Popkin requests the identical information he previously sought in Docket No. R97-1, e.g., revenues and expenses for international mail, phone cards, and philatelic products.⁹ It appears that the Postal Service submitted similar responses in each docket. Mr. Popkin complains that the Postal Service's responses, which refer to, *inter alia*, matters on file with the Commission such as the Cost and Revenue Analysis (CRA), demonstrate, at a minimum, that the Postal Service is "trying to make it difficult for me to effectively participate in this case."¹⁰

The Commission welcomes the participation by individuals and recognizes the unique burdens such participation may entail. Mr. Popkin's suggestion that the Postal Service's action may be an attempt to deprive him of his due process rights is a matter of some concern.¹¹ Certainly, when such charges are lodged, the Commission carefully reviews them. On this topic, it has been noted: "Reasonable accommodations have to be made to facilitate participation by individuals in the rate-making process."¹² Omnibus rate proceedings, however, impose substantial demands on all participants. In that regard, a more discriminating use of the discovery process, including motions practice,

would appear to be due to different fee levels proposed in the two dockets. Compare, e.g., DBP/USPS-58 (n-p) with DBP/USPS-16(n-p).

⁸ POR R97-1/53 directed the Postal Service to respond to DBP/USPS-16(a-d) only. The Postal Service need not respond to its counterpart, DBP/USPS-58(a-d). Not only is Mr. Popkin in receipt of the information, there has been no showing of relevance to this proceeding.

⁹ Compare DBP/USPS-60 and 61 in Docket No. R2000-1 with DBP/USPS-18 and 19, respectively, filed in Docket No. R97-1. Concerning DBP/USPS-19, see also POR R97-1/66, POR R97-1/80, and POR R97-1/85.

¹⁰ Motion at 2.

¹¹ See *ibid.*

¹² POR R97-1/53 at 2.

may relieve some of the burden on all participants, while still serving to develop a complete record on relevant matters.

In this proceeding, the Postal Service, in general, appears to have responded with deference to Mr. Popkin's numerous requests. Moreover, for practical reasons the claim loses its force. Because he posed the identical question in Docket No. R97-1, Mr. Popkin could have shortcut the process in this proceeding by simply requesting, for example, the relevant CRAs. Alternatively, under the Commission's rules, follow-up interrogatories were available to request copies of the relevant materials cited.¹³ Under the circumstances and given the nature of the information requested, the Postal Service's responses in this proceeding are sufficient. Hence, it need not respond further.

DBP/USPS-64. This interrogatory, which seeks revenue and volume data for Priority Mail by transportation categories, was redirected to witness Robinson, who indicated that such data were unavailable. Mr. Popkin is incredulous at this answer, protesting that "[s]ome, most, or all of my requested data should be available."¹⁴ Incredulity, however, is not a sound basis for motions practice. Given that the witness' response was deemed unsatisfactory, Mr. Popkin's options included, for example, employing follow-up interrogatories or oral cross-examination to explore the availability of related or similar relevant data. Witness Robinson appeared, and swore to the accuracy of her written answers to discovery. The witness' answer is sufficient. See, e.g., POR R97-1/85 at 1-2.

DBP/USPS-67(d) and (e). This interrogatory requests the Postal Service to confirm that the Postal Operations Manual and the Domestic Mail Manual both address service levels on and around holidays. The Postal Service responded to subparts (a)–(c), but objected to subpart (d), which concerns exceptions authorized by "the Chief

¹³ This is not to suggest that the Postal Service would be required to provide Mr. Popkin copies of all such documents requested. Various factors, such as the relevance and volume of materials requested, would bear on that decision.

¹⁴ See Motion at 3.

Operating Officer and Executive Vice-President in the past three years.”¹⁵ In its response to subpart (c), the Postal Service noted, among other things, that “[n]o exceptions have been approved by the Chief Operating Officer and Executive Vice-President.” This would appear to respond to subpart (d) as well. Even if not so construed, however, the Postal Service need not do more since there has been no demonstration that the information sought is relevant to this proceeding.

DBP/USPS-71. This interrogatory requests information concerning the criteria used to develop delivery standards. In addition to requesting various permutations of these standards, *e.g.*, if service from A to B is overnight, whether the reciprocal is also true, Mr. Popkin seeks all manner of guidelines, including those utilized in Docket No. N89-1. Mr. Popkin argues that the interrogatories relate to value of service of First-Class Mail. He also cites POR R2000-1/28 as supporting his position.¹⁶ The Postal Service objects on the grounds of relevance and burden.¹⁷

Mr. Popkin's contentions are misplaced. Inquiries concerning the criteria employed by the Postal Service to develop delivery standards, as distinct from inquiries concerning actual performance, are one step removed from, and therefore of limited relevance to issues before the Commission in general rate proceedings.¹⁸ Furthermore, the unexplained reference to POR R2000-1/28 is unavailing. In response to a question from the bench on May 5, 2000, the Postal Service has provided the standards used to adjust the service standards for First-Class Mail. Mr. Popkin fails to demonstrate a nexus between the additional information sought and issues before the Commission. For these reasons, his motion is denied.

DBP/USPS-74 (b)-(e). This interrogatory concerns mail addressed to government agencies in Washington, D.C. Mr. Popkin argues that the timely delivery of

¹⁵ The Postal Service also objected to subpart (e), which requested the Postal Service to explain any subparts not confirmed.

¹⁶ Motion at 3-4.

¹⁷ Opposition at 8-9.

¹⁸ As to the distinction, *see, e.g.*, POR R2000-1/43 and R2000-1/51.

mail to federal agencies affects the value of service of First-Class Mail.¹⁹ The Postal Service objects based on relevance, and that the information requested is not calculated to lead to the discovery of admissible evidence.²⁰ Mr. Popkin's claim of value of service is not persuasive. He has failed to demonstrate any reasonable connection between the mail service accorded to a single, albeit important, entity, and the broad rate issues in this proceeding. The Postal Service's objection is sustained.

DBP/USPS-79 (n). This interrogatory was redirected to witness Davis who responded to each of the 18 subparts. Subpart (n) concerns whether a non-USPS recipient can enter into an agreement with the delivering office for the processing of return receipts. Mr. Popkin seeks an institutional response in light of witness Davis' inability to indicate whether such an agreement was permissible.²¹ In its Opposition, the Postal Service indicates that witness Davis will investigate "this alleged practice more, and revise his response accordingly."²²

On April 26, 2000, the Postal Service submitted witness Davis' revised response to *DBP/USPS-79(n)*.²³ Given this response, Mr. Popkin's motion is moot.²⁴

DBP/USPS-80(h-j).²⁵ Subparts (h-j) seek information concerning possible false advertising claims, including, in addition, oversight by the Federal Trade Commission. Mr. Popkin's motion does not mention any reason justifying a response to these

¹⁹ Motion at 4.

²⁰ Opposition at 8.

²¹ Mr. Popkin also sought the same information in *DBP/USPS-174*.

²² *Opposition* at 9.

²³ Response of United States Postal Service Witness Davis to Interrogatories of David B. Popkin (*DBP/USPS-157(d)*, 168, 173-74, 189, and 195) and Revised Response to *DBP/USPS-79(n)* [erratum], April 26, 2000.

²⁴ In response to Mr. Popkin's statement that the information is needed to complete his analysis of return receipt costs, the Postal Service expresses a concern that it would be denied due process if Mr. Popkin were to present his analysis only on brief. *Opposition* at 9. While it is premature to address that concern, all participants are reminded that the Commission's Rules govern participants' rights to present evidence and otherwise participate in the hearing process. See, e.g., Rule 30.

²⁵ As noted above, the Postal Service no longer opposes subparts (a-g). Its response to those subparts was filed April 19, 2000.

subparts. At a minimum, these questions, as the Postal Service notes, are not calculated to lead to the discovery of admissible evidence. Therefore, the Postal Service need not respond.

DBP/USPS-88. This interrogatory requests a synopsis of the Postal Service's proposals regarding special services in which a rounding constraint greater than one cent was utilized, *e.g.*, "a tabulation of the service, specific category, the rounding constraint utilized and the reasons for its choice" Witness Mayo, to whom the interrogatory was redirected, responded that the rounding constraints applicable to special services were addressed in the "Fee Design" sections of her testimony.

Given the general and essentially preliminary nature of the inquiry, witness Mayo's response is adequate. Even a cursory review of the relevant testimony, which she spotlighted, would provide Mr. Popkin with a better understanding of the Postal Service's proposals, enabling him, if desired, to follow up with more focused inquiries. *Compare, e.g.*, witness Mayo's responses to the interrogatories of Douglas F. Carlson DFC/USPS-T39-3 and T39-9.

DBP/USPS-96. Mr. Popkin seeks a more comprehensive answer to this interrogatory which concerns various operational matters, *e.g.*, "business decisions" by the Postal Service to "process a service," such as Express Mail, Registered Mail, and collections, in a manner contrary to its regulations. He contends that the Postal Service failed to address each of the 18 subparts to his question.²⁶ The Postal Service provided an institutional response, which, as it notes, is applicable to all subparts of the interrogatory.²⁷ The Postal Service's response is adequate.

DBP/USPS-112(a-i). These subparts request information concerning the calculation and derivation of facility rental costs. Such costs are used to support proposed post office box rents. Citing relevance and burden, the Postal Service objects to providing more details of the 1998 cost per square foot calculation for its facility

²⁶ Motion at 5.

²⁷ Opposition at 10.

located in Englewood Cliffs, NJ.²⁸ While maintaining its objection, the Postal Service indicates, in its Opposition, that witness Yezer would respond to a subsequent interrogatory, DBP/USPS-146(a), submitted under seal, which may satisfy Mr. Popkin's needs.²⁹ In light of this subsequent event, Mr. Popkin's motion to compel a response to DBP/USPS-112(a-i) is dismissed, without prejudice, to Mr. Popkin's right to request further relief if the response to DBP/USPS-146(a) is not also an adequate response to DBP/USPS-112(a-i)

DBP/USPS-114. Mr. Popkin claims that witness Kaneer's responses to subparts (a) and (b) are inadequate. Subpart (a) requests the proposed fee group for two particular Zip Codes not included in LR-I-141, which has been submitted under seal. In its Opposition, the Postal Service explains the reason as being either that post office box service is unavailable at those locations, or that the Zip Codes will be assigned as part of the implementation process. The Postal Service further explained that witness Kaneer would address the latter in response to DBP/USPS-152(f).³⁰ The Postal Service's explanation, coupled with witness Kaneer's answer, satisfactorily responds to subpart (a). Subpart (b) questions whether the data used for a specific facility in Tenafly, New Jersey reflect a recent, major renovation. In his response to subpart (b), witness Kaneer indicated that base year 1998 costs were used. This information, while perhaps not responsive to the question posed, may be sufficient to help Mr. Popkin to determine whether it encompasses the recent renovation. In any event, however, absent a showing of relevance, which was not made, witness Kaneer will not be required to respond further.

DBP/USPS-117(j-k) and 118(h-i). These interrogatories request the same information for Insured and Registered Mail, e.g., the cost of processing a claim.

²⁸ Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-108, 109, 112(a-i), 125(b), 129, 130, 131(a), 132(a), 133(a), and 134(a), April 3, 2000, at 3 (April 3 Objection).

²⁹ Witness Kaneer responded to DBP/USPS-146(a) on April 25, 2000.

³⁰ Witness Kaneer's response was filed April 25, 2000.

Witness Davis, to whom the interrogatories were redirected, responded that he was unaware of any studies of the cost of processing such claims.³¹ This response is unacceptable to Mr. Popkin, who argues that “[t]he Postal Service must have some idea of the cost of claim processing”³² In its Opposition, the Postal Service indicates that witness Davis, as the accountable mail cost study witness, is likely to know if such studies exist, and further that he “checked with other knowledgeable postal employees.”³³

The answers elicited, while not providing specific cost information, are not without probative value. Aside from whatever evidentiary claims may be possible concerning the lack of such data, the responses signaled, to the extent Mr. Popkin wished to pursue them, the need to explore alternate means for developing surrogate estimates.³⁴ The situation is the same as presented in regard to DBP/USPS-64. Mr. Popkin’s incredulity is insufficient cause for requiring a further response.

DBP/USPS-122. This interrogatory is an addendum to DBP/USPS-19, which was subject to previous motions practice and recently resolved in POR R2000-1/56. For the reasons discussed therein, Mr. Popkin’s motion is denied concerning DBP/USPS-122. See POR R2000-1/56, May 2, 2000, at 4-5.

DBP/USPS-129. This interrogatory asks specific follow-up questions to DBP/USPS-3, e.g., to clarify whether a particular practice concerning Certified Mail is done on a national basis. Mr. Popkin argues that he needs the information “to evaluate the extent of proper processing of Certified Mail.”³⁵ In its Opposition, the Postal Service

³¹ Response of United States Postal Service Witness Davis to Interrogatories of David B. Popkin (DBP/USPS-106(c-e), 117(j-k), 118(h-i), and 121(a-i, l-t) Redirected from the Postal Service, April 6, 2000.

³² Motion at 6.

³³ Opposition at 12.

³⁴ With respect to processing insurance claims, see, e.g., Response of United States Postal Service witness Davis to Interrogatory of the Office of Consumer Advocate Redirected from witness Mayo, OCA/USPS-T39-18(a), April 20, 2000.

³⁵ Motion at 7.

contends it has already provided all the information it should reasonably be required to provide. Notably, the Postal Service does not claim the material sought is irrelevant. Consequently, the Postal Service is directed to provide responses to this interrogatory, except that with respect to subparts (b) and (c), the Postal Service may limit its response to years beginning with the base year, and concerning subpart (f) the Postal Service should provide a copy of Form 3849.

DBP/USPS-130. Mr. Popkin requests five reports identified in LR-I-181, Office of Inspector General Semiannual Reports to Congress, 1996-1999. The Postal Service objects, citing relevance, burden, and commercial sensitivity.³⁶ The Postal Service indicates that obtaining and reviewing these reports for commercial sensitivity or other privilege "might take 20 to 30 hours."³⁷ Further, the Postal Service questions the relevance of at least three of the reports, which it indicates concern local operations.³⁸ For his part, Mr. Popkin contends that the reports are discoverable.³⁹

Two recent rulings disposed of similar requests for the production of Office of Inspector General (OIG) or Inspection Service reports identified in LR-I-181. In POR R2000-1/51, April 26, 2000, the Postal Service was directed to produce the requested reports and audits as library references.⁴⁰ In POR R2000-1/56, May 2, 2000, the Postal Service was directed to provide an audit report to Mr. Popkin.⁴¹ As in those instances, the reports identified by Mr. Popkin appear sufficiently potentially relevant to issues in this proceeding to warrant their submission as library references. Although the Postal Service has not justified its claim of commercial sensitivity or other privilege, it may, if

³⁶ April 3 Objection at 4.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Motion at 7. Substantively, the Postal Service's Opposition reiterates, without elaboration, its Objection. Opposition at 13-14.

⁴⁰ POR R2000-1/51 at 7-9.

⁴¹ POR R2000-1/56 at 2-5.

appropriate,⁴² submit redacted reports, provided it also submits an explanation supporting the redactions.⁴³ The reports requested should be filed by no later than May 15, 2000.⁴⁴

DBP/USPS-131(a), 132(a), 133(a), and 134(a). Subpart (a) of each of these interrogatories asks the Postal Service to verify letters addressed to Mr. Popkin concerning the processing of return receipt certified mail addressed to the Internal Revenue Service. The letters appear to be written on official Postal Service stationery. The Postal Service objects, claiming burden and Mr. Popkin's failure to submit an affidavit detailing his receipt of the letters.⁴⁵ Mr. Popkin argues that the Postal Service's contentions are specious.⁴⁶ In its Opposition, the Postal Service characterizes Mr. Popkin's motion as "argu[ing] that the Postal Service is obligated to confirm the validity of letters that Mr. Popkin provides during cross-examination of the Postal Service."⁴⁷ In addition, the Postal Service relies on POR R97-1/70 which addressed a similar issue, albeit in a slightly different context.⁴⁸

Essentially, Mr. Popkin seeks an admission from the Postal Service that the letters were written by Postal Service employees in the course of their ordinary business duties. To that extent, authenticating the letters entails no burden. Furthermore, unlike the situation addressed in POR R97-1/70, there is neither an

⁴² See, e.g., Response of United States Postal Service to Presiding Officer's Information Request No. 9, Question 6, May 3, 2000.

⁴³ In that regard, the claim of potential burden is unsubstantiated, and hence not credible.

⁴⁴ As a courtesy to Mr. Popkin, copies should be served on him.

⁴⁵ *Ibid.*

⁴⁶ Motion at 7.

⁴⁷ Opposition at 14.

⁴⁸ *Ibid.* In that case, Douglas Carlson sought to introduce a cross-examination exhibit and library reference into evidence. The cross-examination exhibit consisted of letters, from, *inter alia*, postal employees describing procedures for the delivery of certified mail addressed to the Internal Revenue Service (IRS) and state tax collection agencies. The library reference consisted of letters sent by Mr. Carlson and Mr. Popkin to the Postal Service and the IRS requesting information on the processing of return receipt mail. POR R97-1/70 denied the motion based on the finding that, among other things, "the appropriate point for introduction of the letters is during Carlson's (or Popkin's) direct/rebuttal case."

element of surprise nor a specific witness being asked to vouch for the authenticity of Postal Service correspondence not authored by that witness.⁴⁹ Nonetheless, simply authenticating the letters may not assist the record. Thus, in lieu of that, the Postal Service is directed to address the following: whether the letters accurately describe the current procedures used to process return receipt mail under the circumstances represented in the letters. If not, the Postal Service should explain the differences.⁵⁰

RULING

1. David B. Popkin's April 12th motion to compel, identified in footnote 1 above, is denied in accordance with the foregoing discussion, except as to:

- (a) DBP/USPS-79(n) which is moot;
- (b) DBP/USPS-112(a-i) which is dismissed, without prejudice;
- (c) DBP/USPS-129 as modified;
- (d) DBP/USPS-130; and
- (e) DBP/USPS-131(a), 132(a), 133(a), and 134(a) as modified.


Edward J. Gleiman
Presiding Officer

⁴⁹ Nor is timeliness of the interrogatory a concern as it was in POR R97-1/89.

⁵⁰ A ruling on the evidentiary status of these letters will be deferred pending receipt of the Postal Service's response. See Tr. 14/5349-51.