

RECEIVED

MAY 23 2 16 PM '00

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. R2000-1/68

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 MAY 3RD MOTIONS

(Issued May 23, 2000)

On May 3, 2000, David B. Popkin filed two motions to compel. The first seeks to compel responses, or more responsive answers, to six interrogatories.¹ The Postal Service objected on various grounds, e.g., as irrelevant, untimely, and burdensome.² The second motion was filed under seal concerning DBP/USPS-145(a)-(c).³ In its opposition to the first motion, the Postal Service expands on its objection, but also indicates that it did not oppose Mr. Popkin's motions concerning DBP/USPS-190 and DBP/USPS-145(a)-(c).⁴ Further, the Postal Service stated that it would file a response to DBP/USPS-190 and a revised response to DBP/USPS-145(a)-(c) within a week.⁵ In

¹ Motion to Compel Responses to DBP/USPS Interrogator[ies] DBP/USPS-158(a), (d), and (j), 170(c)-(e), 184, and 190-192, (May 3, 2000 (Motion)).

² Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-158(b),(d),(j), 162, 170, 176, 182(b)-(c), 183(e), 186(g)-(k), 187(b)-(c), 190, and 191), April 24, 2000 (Objection). The Postal Service filed a separate objection to DBP/USPS-184, accompanied by a motion to accept that objection out-of-time. Objection of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-184) and Motion for Late Acceptance, April 27, 2000 (April 27th Objection). The Motion for Late Acceptance is granted.

³ Motion to Compel Responses to DBP/USPS Interrogatory DBP/USPS-145(a)-(c), May 3, 2000.

⁴ Opposition of the United States Postal Service to Motion of David B. Popkin to Compel Responses to Interrogatories DBP/USPS-158(a), (d), and (j), 170(c)-(e), 184, 191 and 192, and Response to Motion to Compel Response to Interrogatory DBP/USPS-145(a)-(c) (Opposition).

⁵ *Ibid.* The revised response to DBP/USPS-145 was filed May 17, 2000. A response to DBP/USPS-190 has been to date.

light of this, the second motion and that portion of the first motion concerning DBP/USPS-190 are dismissed as moot, without prejudice, to Mr. Popkin's right to request further relief, if warranted, pursuant to the Commission's Rules of Practice. Concerning the remaining interrogatories, which will be considered seriatim, Mr. Popkin's motion is denied.

DBP/USPS-158(a). This interrogatory is a follow-up to DBP/USPS-45. Subpart (a) asks for examples where the person signing the return receipt would be different than the person whose printed name appears on the form. In response, witness Mayo provided two examples. Mr. Popkin claims the examples are far-fetched and moves for "a proper response."⁶ The Postal Service argues that the answer is responsive, contending that Mr. Popkin can present alternative views in testimony or brief.⁷

Mr. Popkin has not demonstrated the need for additional examples. Nor is one apparent. Therefore, the Postal Service's objection is sustained.

DBP/USPS-158(d). In response to DBP/USPS-45(e)-(f), witness Mayo declined to confirm that the date of delivery must include the year to be correct. DBP/USPS-158(d) requests the Postal Service to "[c]onfirm that the date shown in a cancellation and a round dater will show the year in addition to the month and date." Mr. Popkin argues that without the year the value of service is diminished.⁸ The Postal Service objects to subpart (d), claiming these operational details are irrelevant to issues in this proceeding. In addition, the Postal Service indicates that "neither a cancellation nor round dater is used in providing return receipt service."⁹

The gist of Mr. Popkin's motion is that, while he knows the answer to the question, he wants the Postal Service's response so he need not file his own

⁶ Motion at 3.

⁷ Opposition at 1.

⁸ *Id.* at 1.

⁹ Opposition at 2.

testimony.¹⁰ This rationale, however, does not justify compelling a response absent a showing of relevance, which has not made.¹¹ Moreover, the combination of witness Mayo's response and the Postal Service's further elaboration provides sufficient information concerning this operational detail for purposes of this proceeding. Mr. Popkin's motion is denied.

DBP/USPS-158(j). In response to *DBP/USPS-45(z)*, which requested the procedures applicable to obtaining a duplicate return receipt, witness Mayo provided a citation to the Domestic Mail Manual (DMM). Dissatisfied with that response, Mr. Popkin requests, in subpart (j), "the specific items a mailer would have to do" to obtain a duplicate. The Postal Service objects, contending that witness Mayo's answer was fully responsive.¹² In his motion, Mr. Popkin argues that he desires a description of the "actual mechanics necessary to obtain a duplicate return receipt" to demonstrate that the process is "a hassle and reduces the value of return receipt service."¹³

The Postal Service's initial response is satisfactory. The DMM section referenced, § 915.4, provides a sufficient explanation of the process for purposes of this proceeding. The rationale offered by Mr. Popkin, *i.e.*, that the process is a hassle and diminishes the value of service, does not justify requiring a further response. Mr. Popkin's motion is denied.

DBP/USPS-170(c)-(e). The Postal Service responded to subparts (a) and (b), but objects to subpart (c)-(e), arguing they are irrelevant and untimely.¹⁴ Briefly, subpart (c) seeks operational details concerning mail received at a retail window on Sundays. Subpart (d), which Mr. Popkin explains is a follow-up to *DBP/USPS-75(c)*, asks for a

¹⁰ Motion at 1.

¹¹ Mr. Popkin's vague reference to value of service fails to establish a nexus sufficient between the operational details he seeks and issues before the Commission. This is not to say, however, that he is not free to argue his point.

¹² Objection at 2.

¹³ Motion at 1.

¹⁴ Objection at 3.

comprehensive listing of exceptions to what the Postal Service stated was its general policy of processing mail deposited with a city delivery, rural, or HCR carrier. Subpart (e) concerns how such exceptions may affect EXFC results. While acknowledging that “this information could have been [requested] at any time in the case,” Mr. Popkin contends that subparts (c)-(e) were prompted by the Postal Service’s response to DBP/USPS-75.¹⁵ In its Opposition, the Postal Service expands on argument that the information requested is not proper follow-up and irrelevant.¹⁶

The Postal Service’s argument is persuasive as follows. Subparts (c) and (e) cannot reasonably be read as legitimate follow-ups to DBP/USPS-75. Hence, at a minimum, they are untimely. In subpart (d), Mr. Popkin requests a comprehensive listing of exceptions to an operational detail. Mr. Popkin offers no justification that would warrant production of such information by the Postal Service.¹⁷ Even assuming subpart (d) qualified as a follow-up, absent such a showing, Mr. Popkin’s motion is denied.

DBP/USPS-184. Mr. Popkin contends that a response to DBP/USPS-184 is necessary “to challenge” the Postal Service’s answer to DBP/USPS-110.¹⁸ DBP/USPS-110 was itself a follow-up to DFC/USPS-41(f), which concerned the dispatch of Priority Mail tendered at postal facilities on Sundays. The Postal Service responded, in part, to the latter as follows: “The national policy is that there is no commitment to process and dispatch Priority Mail on Sundays.”¹⁹ In following-up this response, DBP/USPS-110 changed the focus of the inquiry to mailers’ expectations regarding the collection and

¹⁵ Motion at 1-2.

¹⁶ Opposition at 2-4.

¹⁷ In his motion, Mr. Popkin indicates that subpart (e) is a follow-up to DBP/USPS-170(d), and not DBP/USPS-70. Motion at 2. Even if so considered, the result would be unchanged. As with subpart (d), Mr. Popkin failed to provide any rationale supporting production of the information sought.

¹⁸ Motion at 2.

¹⁹ Response of the United States Postal Service to the Interrogatories of Douglas F. Carlson, DFC/USPS-41(f), March 2, 2000.

processing of Priority Mail deposited in a collection box on Sundays.²⁰ The Postal Service responded to DBP/USPS-110 indicating, among other things, that limited Sunday processing was an exception to its general policy. DBP/USPS-184 continues to focus on mailers' expectations, but expands the inquiry to the processing and dispatch of mail deposited in collection boxes on days other than Sundays. The Postal Service objects, arguing that it is inappropriate follow-up, irrelevant, and cumulative.²¹

In its prior responses, the Postal Service explained its national policy, and also acknowledged that limited exceptions may occur. Further, it reiterated its commitment "to providing dispatch service consistent with its national policies."²² As noted, DBP/USPS-184 seeks to expand the inquiry concerning mailers' expectations. The relevancy of mailers' expectations, as opposed to actual results, is not apparent. Nor has Mr. Popkin demonstrated they are relevant. Accordingly, Mr. Popkin's motion is denied.²³

DBP/USPS-191. This interrogatory is a follow-up to DBP/USPS-124. Witness Mayo responded to the latter, which concerned, generally, the numbering system employed by the Postal Service on, *inter alia*, PS Form 3800.²⁴ In DBP/USPS-191, Mr. Popkin seeks additional information concerning the numbering system and make-up of various labels used by the Postal Service, *e.g.*, for certified and registered mail, the printing of such labels, and the use of removable labels. Mr. Popkin characterizes this

²⁰ In addition, DBP/USPS-110 inquired about mailers' expectations based on advice dispensed by a retail clerk on Sunday.

²¹ April 27th Objection at 2-3.

²² April 27th Objection at 2.

²³ To the extent that other subsections of DBP/USPS-184, such as (g) and (h), seek to follow-up DBP/USPS-110, Mr. Popkin failed to show how the information requested, *e.g.*, whether mailers should assume that window clerks are knowledgeable, was reasonably calculated to lead to the discovery of admissible evidence. Moreover, as the Postal Service notes, in context, the phrase "knowledgeable retail clerk" was intended to distinguish a possible atypical situation.

²⁴ DBP/USPS-124 was a follow-up to DBP/USPS-1. While the former makes no mention of the specific form in question, the latter does and to return receipts as well.

interrogatory as a follow-up “on the numbering system for various special services.”²⁵ The Postal Service objects, arguing that “[r]esponses to these questions would not add to the record with respect to the pricing of special services. . . .”²⁶

The Postal Service makes a valid point.²⁷ There is no apparent nexus between the numbering system employed and issues arising (or likely to arise) in this proceeding. In light of the Postal Service’s objection, it was essential that Mr. Popkin demonstrate that the information sought was reasonably calculated to lead to the discovery of admissible evidence. He did not do so. Thus, the Postal Service’s objection is sustained.

DBP/USPS-192. Mr. Popkin seeks to compel a more responsive answer to this interrogatory, which concerns the processing of return receipts destined to the Internal Revenue Service.²⁸ Mr. Popkin argues that a “proper response” is needed “to fully evaluate the level of service and corresponding value of return receipt service.”²⁹ The Postal Service contends that its previous answers, along with witness Mayo’s testimony, are sufficient.³⁰

Witness Mayo’s response to DBP/USPS-192 is satisfactory. It would appear that she answered it completely. That the Postal Service does not collect the type of information requested in subpart (b) does not justify requiring a response from postmasters in four cities. Furthermore, given the record developed to date on this issue, it is not apparent that any further response by the Postal Service would add meaningfully to it. Certainly, as the Postal Service notes, it has acknowledged that

²⁵ Motion at 2.

²⁶ Opposition at 5.

²⁷ Moreover, as the Postal Service notes, it previously responded to detailed questions concerning its recently issued new special service labels. Objection at 5.

²⁸ This interrogatory is a follow-up to DBP/USPS-131-134.

²⁹ See Motion at 3 and 4.

³⁰ Opposition at 5.

problems with return receipt service, identified in LR-I-200, might occur elsewhere as well. Accordingly, Mr. Popkin's motion is denied.

RULING

1. David B. Popkin's motion to compel, filed May 3, 2000, and identified in footnote 1 above, is:
 - (a) denied as to DBP/USPS-158(a), (d), and (j), 170(c)-(e), 184, 191 and 192; and
 - (b) dismissed as moot as to DBP/USPS-190, without prejudice, to Mr. Popkin's right to request further relief, if warranted, pursuant to the Commission's Rules of Practice.

2. David B. Popkin's Motion to Compel Responses to DBP/USPS Interrogatory DBP/USPS-145(a)-(c), May 3, 2000 is dismissed as moot, without prejudice, to Mr. Popkin's right to request further relief, if warranted, pursuant to the Commission's Rules of Practice.

3. The Postal Service's Motion for Late Acceptance of its April 27th Objection, identified in footnote 2 above, is granted.


Edward J. Gleiman
Presiding Officer