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PRESIDING OFFICER'S
RULING NO. R2000-1/74

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 CONCERNING
DAVID B. POPKIN'S MAY 10th MOTION

(Issued June 6, 2000)

On May 10, 2000, David B. Popkin filed his seventh motion to compel responses from the Postal Service.¹ The motion, which is opposed by the Postal Service, concerns DBP/USPS-197-202. The Postal Service objects to these interrogatories on various grounds, arguing, *e.g.*, that the questions are moot, cumulative, and unlikely to lead to the discovery of admissible evidence.² In addition, the Postal Service cites Presiding Officer's Ruling R2000-1/56 as dispositive of certain issues.³ As discussed below, Mr. Popkin's motion is denied except for certain subsections of DBP/USPS-198.

DBP/USPS-197. In this interrogatory, Mr. Popkin requests the Postal Service to respond to eight interrogatories, DBP/USPS-28-36, which, at the time DBP/USPS-197 was filed, were the subject of a previous, then-pending motion to compel filed by Mr. Popkin.⁴ The latter was resolved in POR 56, which, *inter alia*, directed the Postal

¹ Motion to Compel Responses to DBP/USPS Interrogator[ies] DBP/USPS-197-202, May 10, 2000 (Motion).

² Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-197-200), May 5, 2000 (First Objection); and Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-201-202), May 5, 2000 (Second Objection).

³ See Presiding Officer's Ruling R2000-1/56, May 2, 2000 (POR 56).

⁴ See Motion to Compel Responses to DBP/USPS Interrogatories DBP/USPS-19-23, 24(a)-(c), (e), 25, 26(c)-(e), 28-36, and 98(b)-(e), April 3, 2000.

Service to respond in limited fashion to DBP/USPS-28-36.⁵ In his motion, Mr. Popkin seeks responses to DBP/USPS-28-36 “over and above” that required by POR 56 “[t]o the extent” that they may be considered appropriate follow-up to DBP/USPS-80(f) and DFC/USPS-79 and 80.⁶ The Postal Service argues that POR 56 renders DBP/USPS-197 cumulative and moot.⁷

Mr. Popkin’s attempt to characterize DBP/USPS-197 as follow-up, while his previous motion to compel was pending, and then, notwithstanding that POR 56 specifically held that the detail requested in DBP/USPS-197-202 “is not a legitimate end of discovery,” to pursue the matter further through his motion flaunts appropriate procedure. In neither case was there a justifiable basis for the filing. Concerning DBP/USPS-197, Mr. Popkin was already seeking relief pursuant to his prior motion to compel. He was not entitled to “a second bite of the apple” absent changed circumstances, which he failed to demonstrate. As for the motion, POR 56, which was issued eight days before the current motion was filed, made it abundantly clear that the Postal Service need not provide the detailed information requested in DBP/USPS-28-36.⁸ In sum, there was no legitimate basis to pursue the matter further; nor was any offered by Mr. Popkin. His motion is denied.

DBP/USPS-198. This interrogatory is a follow-up to the Postal Service’s response to DFC/USPS-79(c), which indicated, in part, that post offices may “institute exceptional transportation when [Express Mail] service commitments require.” Mr. Popkin requests details concerning “exceptional transportation,” with a particular emphasis on operations in Alaska. The Postal Service objects, claiming, pursuant to POR 56, that it need not respond in detail to questions seeking highly specific

⁵ POR 56 at 9-11.

⁶ Motion at 1.

⁷ First Objection at 1.

⁸ POR 56 at 11.

operational or managerial details about Express Mail.⁹ In his motion, Mr. Popkin argues that the information sought is relevant as an indicia of value of service, and further that the interrogatory simply seeks to explore the Postal Service's statement concerning exceptional transportation.¹⁰ In its response, the Postal Service contends that Mr. Popkin's argument concerning value of service "confuses all late articles with articles that are late because of limited transportation at isolated offices."¹¹ Therefore, according to the Postal Service, the interrogatory "sheds no light on either the absolute or relative value of Express Mail."¹²

The Postal Service's response to DFC/USPS-79(c), which DBP/USPS-198 purports to follow up, addressed the timeliness of delivery of Express Mail destined for a post office that does not receive mail six days per week. In addition to noting the use of "exceptional transportation," the response concludes: "The fact that an office does not normally receive mail on a particular day therefore does not necessarily preclude delivery of the piece in accordance with the service guarantee." That exceptional transportation may be used to satisfy the service guarantee makes exploration of that issue germane. Aside from value of service, the issue of exceptional transportation may have implications for the costs and revenues associated with Express Mail. Thus, to the limited extent that DBP/USPS-198 seeks to explore the meaning of the phrase "exceptional transportation," it is proper follow-up. This includes subsections (a), (b), (c), (f) and (g).¹³ The Postal Service need not respond to the remaining subsections,

⁹ First Objection at 1, citing POR 56 at 2.

¹⁰ Motion at 1.

¹¹ Response at 1.

¹² *Id.* at 1-2. In addition, the Postal Service reiterates its reliance on POR 56 for the proposition that it need not respond.

¹³ In response to subsection (b), citations to generally available manuals, if applicable, will be sufficient.

which, as a general matter, either cannot be viewed as legitimate follow-up, or, seek detailed operational information beyond “the realm of appropriate discovery.”¹⁴

DBP/USPS-199. This interrogatory requests the Postal Service to confirm that customers, having been informed of Express Mail service levels, could have an expectation that delivery would be accomplished in timely fashion. The Postal Service objects, contending the question is unlikely to lead to the discovery of admissible evidence.¹⁵ Mr. Popkin argues that a response to DBP/USPS-199 is needed to “challenge and clarify” what he perceives to be the Postal Service’s position.¹⁶ In responding to the motion, the Postal Service suggests, among other things, that Mr. Popkin “can pursue his theories” in testimony or on brief.¹⁷

In response to DBP/USPS-62, the Postal Service provided certain information regarding Express Mail service, including, *e.g.*, on time and late delivery percentages, and information concerning refunds. DBP/USPS-199 inquires about customers’ expectations. The relevance of mailers’ expectations, however, is not apparent.¹⁸ Nor has Mr. Popkin demonstrated they are relevant. He contends that a number of customers will be misled by the promise of guaranteed delivery that was unachievable and thus be upset. Even accepting this contention as true, however, does not make customers’ expectations relevant in a ratemaking context. The motion is denied.

¹⁴ POR 56 at 6.

¹⁵ See First Objection at 1-2.

¹⁶ Motion at 2. According to Mr. Popkin, “[t]he Postal Service feels that customers will be happy to have the Postal Service make the best effort possible to deliver Express Mail even if it is not delivered by the guaranteed time.” *Ibid.*

¹⁷ Response of United States Postal Service to David B. Popkin Motion to Compel Re[s]ponses to Interrogatories DBP/USPS-197-202, May 17, 2000 at 2 (Response). In its Response, the Postal Service notes that DBP/USPS-199 follows-up a prior interrogatory, presumably meaning DBP/USPS-62 since it is referenced in the former. The Postal Service indicated that it responded to that prior interrogatory, stating that it “has no responsive information concerning customer expectations in this regard.” Response at 2. Since the Postal Service’s response to DBP/USPS-62 does not appear to include the language quoted, it is unclear what response the Postal Service intended to reference.

¹⁸ Accord POR R2000-1/68 at 5.

DBP/USPS-200. The Postal Service indicated that it had no information in response to DBP/USPS-80(e), which sought the percent of Express Mail users who “will believe that the use of the word guarantee . . . will indicate that . . . delivery will be made by the guaranteed time[.]” DBP/USPS-200 asks the Postal Service to approximate that percentage. In support, Mr. Popkin contends that the Postal Service has provided approximations in other instances.¹⁹ Further, Mr. Popkin argues that “the Postal Service should not be able to avoid providing an estimate because they don’t want to show that they are using the word guarantee in what I believe is a misleading way.”²⁰

Mr. Popkin has the Postal Service’s answer – it does not have the information requested. Nonetheless, he now essentially requests the Postal Service’s best guess to demonstrate, according to Mr. Popkin, that the Postal Service is misusing the word guarantee. Although Mr. Popkin contends that the Postal Service has provided estimates in other instances, he neither gives examples nor, more importantly, demonstrates that the estimate he seeks has any probative value. As the Postal Service notes, the approximation Mr Popkin seeks, “essentially a guess,” is not likely to lead to the discovery of admissible evidence.²¹ Accordingly, Mr. Popkin’s motion is denied.

DBP/USPS-201. This interrogatory is a follow-up to DBP/USPS-137, which itself is a follow-up to DBP/USPS-17, each of which concerned delivery confirmation service. Witness Mayo, who answered each of the foregoing, distinguished, *inter alia*, between delivery of and access to the mailpiece via a post office box and a residential

¹⁹ Motion at 2.

²⁰ *Ibid.*

²¹ First Objection at 2. In its Response, the Postal Service notes that DBP/USPS-200 follows-up a prior interrogatory, presumably meaning DBP/USPS-80 since it is referenced in the former. The Postal Service indicated that it responded to that prior interrogatory, stating that it “has no basis on which to make such an approximation.” Response at 2. Since the Postal Service’s response to DBP/USPS-80 does not appear to include the language quoted, it is unclear what response the Postal Service intended to reference.

receptacle. Mr. Popkin contends that her answer is misleading and that she should be required to clarify it.²² The Postal Service objects, arguing that the question is cumulative and that witness Mayo's answers are fully responsive.²³

The information sought by DBP/USPS-201 is unclear.²⁴ It would appear, however, that Mr. Popkin, focusing on the last sentence of witness Mayo's response to DBP/USPS-137(b), interprets her answer as equating access to a post office box with that of a residence. In that sentence, witness Mayo states: "This [delivery of mail to a box and subsequent pick up by the customer] is similar to delivery of a mailpiece to a residence when the customer does not pick up the mailpiece until later in the day."²⁵ Any confusion as to access should have been dispelled by witness Mayo's observation that unlike residential receptacles, "post office boxes may not be accessible at all times."²⁶ Regardless, to the extent that Mr. Popkin wishes to present a different view, he may, as the Postal Service notes, do so through testimony or on brief.²⁷ His contention, however, neither renders witness Mayo's answer misleading nor requires a further response by the Postal Service. The motion is denied.

DBP/USPS-202. DBP/USPS-24 asked a series of questions concerning Shipping Online. Witness Mayo responded to subpart (d), indicating that she was unaware of the insurance services associated with Shipping Online.²⁸ In response to DBP/USPS-138, a follow-up to DBP/USPS-24(d), witness Mayo indicated that she did not know the insurance charges, provided a website address, and suggested that the

²² Motion at 2.

²³ Second Objection at 1.

²⁴ The interrogatory asks the Postal Service to "[p]lease explain the original question."

²⁵ Witness Mayo's Response to DBP/USPS-137(b).

²⁶ *Ibid.*

²⁷ Second Objection at 1.

²⁸ The Postal Service responded to subparts (b) and (c) of DBP/USPS-24 pursuant to POR 56, which found, *inter alia*, that Shipping Online was not in issue in this proceeding. POR 56 at 7.

company, Universal Parcel Insurance Coverage (U-PIC), be contacted instead.²⁹ DBP/USPS-202, which is characterized as a follow-up to DBP/USPS-138, requests information about U-PIC. More specifically, noting that U-PIC describes itself as a strategic partner of the Postal Service, Mr. Popkin requests, in subparts (a)-(c), respectively, details of the partnership, a copy of any contract that exists, and an explanation of U-PIC's insurance charges. Subpart (d) asks why U-PIC "is not promoted on other USPS services." The Postal Service objects to this interrogatory on numerous grounds. It disavows any strategic partnership and contends that it does "not have a contract establishing a strategic partnership."³⁰ It argues that the subparts (a)-(c) are questions for U-PIC. Finally, the Postal Service contends that subpart (d) is not proper follow-up, is cumulative, and concerns Shipping Online.³¹ In his motion, Mr. Popkin concedes that Shipping Online "may not be an issue" in this proceeding, but contends that "the underlying services it provides are . . ."³² In its response, the Postal Service acknowledges that services for which Shipping Online serves as a channel, like Express Mail and Priority Mail, are at issue in this proceeding, but argues that third-party insurance is not.³³ Moreover, the Postal Service claims that it does not have information responsive to this interrogatory.³⁴

Mr. Popkin's motion to compel a response to DBP/USPS-202 must be judged against the following background. First, POR 56 found that Shipping Online is not at

²⁹ Witness Mayo's Response to DBP/USPS-138.

³⁰ Second Objection at 2. In addition, the Postal Service states that "[t]o the extent U-PIC's involvement with Shipping Online is involved, that relationship is limited to the placement of website links on each other's websites, so that insurance is readily available over the Internet to Shipping Online customers."

³¹ *Id.* at 2-3.

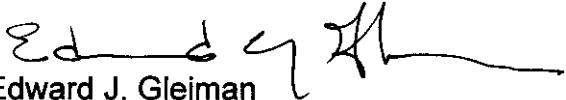
³² Motion at 2.

³³ Response at 3. Pursuant to POR 56, the Postal Service describes Shipping Online as "a channel . . . for Internet access to DMCS products, by which customers can prepare Express and Priority Mail for mailing and pay postage." Compelled Response of United States Postal Service to DBP/USPS-24(b-c), May 9, 2000.

issue in this proceeding. Second, the Postal Service interposed numerous objections. Third, DBP/USPS-202 moved beyond Shipping Online, requesting information about U-PIC, a third-party insurer. In light of this background, Mr. Popkin is obliged to do more than simply claim that certain "underlying services" are at issue. At a minimum, he is required to demonstrate that the information requested was likely to lead to the discovery of admissible evidence. He has failed to do so. Consequently, the motion is denied.

RULING

David B. Popkin's motion to compel, filed May 3, 2000 and identified in footnote 1 above, is denied, except as to DBP/USPS-198(a), (b), (c), (f), and (g). As noted above, in response to subsection (b), citations to generally available manuals, if applicable, will be sufficient.


Edward J. Gleiman
Presiding Officer

³⁴ *Id.* at 4.