

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-207(A-J), 208(D), 219, 222-224, AND 230-238
(June 7, 2000)

The United States Postal Service hereby opposes the motion of David B. Popkin to compel responses to interrogatories DBP/USPS-207(a-j), 208(d), 219, 222 to 224, and 230 to 238, filed May 31, 2000.^{1/}

Interrogatory DBP/USPS-207(a-j) asks about the history of post office box fee groups. Mr. Popkin's motion gives a general reason for the interrogatory, but does not address the Postal Service's detailed objections to each of the 10 parts of this interrogatory. The Postal Service rests on its objections that the questions are *cumulative, untimely and not proper follow-up.*

With respect to DBP/USPS-208(d), Mr. Popkin claims he wants the Postal Service to obtain and provide a contract for a particular facility in order to "fully evaluate the data" for that facility. However, most of the contractual data were not needed or used by the Postal Service in its post office box costing analysis in this proceeding, and the data that were used have already been provided. Moreover, even those data that

^{1/} The Postal Service questions whether the cursory nature of Mr. Popkin's motion should be considered sufficient to require a detailed Presiding Officer's Ruling on each of these interrogatories, most including multiple parts.

were used were only minor inputs to witness Yezer's regression analysis, and were not used directly to impute rental value for the particular facility at issue. See witness Yezer's response to interrogatory DBP/USPS-146, filed April 25, 2000, and refiled (without change) May 17, 2000. As shown by witness Yezer's response, the Postal Service has already been quite helpful in explaining the treatment of this facility located near Mr. Popkin. The Postal Service thus should not be required to provide more, especially given the burden, relevance, and redundancy concerns explained in its objection, and Mr. Popkin's unclear, conclusory basis for seeking a response.

With regard to DBP/USPS-219, Mr. Popkin has now filed a motion to compel which consists in its entirety of the following sentence:

The response to DBP/USPS-219 is needed is to clarify the response previously given to DBP/USPS-170[b] by indicating that all offices should have final dispatch of 5 PM or later.

Needless to say, this cryptic assertion does little to enlighten the reader as to the subject matter or context of the motion to compel, or those of the interrogatory response upon which number 219 purports to follow up. In an attempt to put the matter in some context, and for purposes of convenience, the Postal Service reproduces the text of its objection here:

The Postal Service hereby objects to interrogatory DBP/USPS-219, filed by Mr. Popkin on May 3, 2000, and directed to the Postal Service. Interrogatory DBP/USPS-219 reads as follows:

DBP/USPS-219. Please refer to your response to DBP/USPS-170[b]. In the second example that you gave [retail window open until 5 PM / last dispatch at 4 PM], shouldn't the last dispatch be at 5 PM or later? If not, why not?

The Postal Service objects on the grounds of relevance. Once again, Mr.

Popkin is not seeking information, he is using what purports to be discovery to argue about what operational practices should and should not be. The earlier response describes an operational situation (an office in which the retail window is open until 5PM, but the last daily dispatch to the mail processing facility is on transportation which picks up at the office no later than 4PM) which exists in the real world for reasons that relate to local conditions and the minutiae of postal operational logistics and practices. Whether or not Mr. Popkin believes that the situation should not exist has nothing to do with the rates to be recommended by the Commission in this proceeding. Rate case do not exist to review operational practices. The Postal Service objects.

Objection of the United States Postal Service to Interrogatory of David B. Popkin (DPB/USPS-219) (May 15, 2000). The Postal Service notes that Mr. Popkin has made no attempt to acknowledge, much less address, the substance of the objection. His motion to compel, if anything, underscores his total miscomprehension of the function of postal rate proceedings. He apparently wishes to continue to advocate that the function of postal rate proceedings is to identify what local operational practices "should" be, regardless of any tangible rate consequences associated with those practices. The Postal Service should not be required to respond to DBP/USPS-219.

With respect to DBP/USPS-222, Mr. Popkin's one-sentence motion seems to ignore the Postal Service's objection, and fails to explain how responses to the 8 operational questions in this interrogatory are necessary for this proceeding. The interrogatory asks about operational details related to POS-1 functions, and does not ask specifically about any certified mail costs. Especially given the lack of intervenor testimony on certified mail costs, responses would not be useful for addressing issues in this proceeding.

Mr. Popkin's moves to compel a response to DBP/USPS-223 simply by stating in one sentence that a response would relate to the value of return receipt service when

the date does not show a year. But the interrogatory asks about the processes for correcting a subset of return receipts, and thus does not relate to the overall value of return receipt service in a way that would affect pricing. Mr. Popkin's sentence also fails to address the objection's concern that the interrogatory requests legal analysis, and that the Postal Service has not identified any responsive information.

Mr. Popkin's sentence on DBP/USPS-224 states a desire for the record to show that the Postal Service "formerly had a service of Return Receipt Showing Address Where Delivered and that this service was absorbed into the present service." This information is available from the record and Recommended Decision in Docket No. MC96-3. A response to this interrogatory thus is not needed. In any case, Mr. Popkin has not demonstrated that this information would advance the record in this proceeding. Moreover, Mr. Popkin's motion is inconsistent with the original interrogatory, which asked for a new answer to interrogatory DBP/USPS-159, which in turn asked for confirmation that the former return receipt showing address service is no longer available (rather than had been absorbed). Notably, witness Mayo's response to DBP/USPS-159(b) already suggests that the old service has been absorbed into the new service.

Mr. Popkin also moves to compel a response to DBP/USPS-230, a multipart question largely concerning zone definitions for Priority Mail and service standard information displayed on retail terminals. The Postal Service objected to this question on the ground that it is not timely and is not appropriate follow-up to the response to a question posed at hearing, as well as on relevance grounds. The Postal Service rests on its objections. It should be noted again, however, that with respect to subpart (i) of

this question, Mr. Popkin unabashedly seeks to overturn a prior ruling which upheld a previous objection to the same question. See POR R2000-1/59, issued on May 10, 2000. This attempt to bootstrap a previously rejected question on the pretense of following up, while simultaneously relitigating a prior adverse ruling, should not be countenanced. As stated recently, Mr. Popkin is "not entitled to 'a second bite of the apple'". POR R2000-1/74, issued June 6, 2000. Furthermore, it should be apparent that with respect to those subparts seeking confirmation of certain Priority Mail zone definitions and service standards, (subparts b-h), such zones have been a prominent feature of the Priority Mail rate structure for years, and these questions clearly could have been asked months ago. As they were not dependent on or triggered by the response they purport to follow up, they constitute another attempt to unfairly to extend the discovery period against the Postal Service. The Postal Service urges the Presiding Officer not to allow the Postal Service's efforts to respond to questions posed at hearing to be unfairly used as a pretext for extending the discovery period on its direct case.^{2/} Finally, subpart j asks the Postal Service to speculate regarding whether allegedly misleading information produced by certain unspecified "systems" will cause mailers to make "inappropriate" decisions regarding usage of certain classes of mail. The Postal Service contends that this issue, to the extent it is coherent, is not within the realm of Commission decisionmaking in this case and is not likely to give rise to

^{2/} If follow-up on responses to homework is to be permitted (other than focused questions to clarify an unclear response), the Postal Service may need to resist more requests for homework, especially when the homework is not necessary "for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence." Rule 30(e)(3).

admissible evidence. The Postal Service's objections to this question should be sustained.

With respect to DBP/USPS-231 through 238, Mr. Popkin argues that he is merely trying to "clarify and follow-up on the material presented" in the May 4, 2000, response of the Postal Service to a hearing room question posed by Commissioner Goldway. Among these questions, Mr. Popkin asked two questions which, arguably, seek clarification: DBP/USPS-237 and 239. In the course of filing its May 22, 2000, objections, the Postal Service provided clarifying information which is responsive to those two questions. On that same date, notwithstanding its objection to DBP/USPS-234, the Postal Service provided responsive information in the form of Library Reference I-336. Otherwise, even if the remainder of this subset of Mr. Popkin's interrogatories were triggered by Commissioner Goldway's hearing room question and/or the information provided in response to that question, Mr. Popkin is still bound by the Commission's rules to propound interrogatories in Docket No. R2000-1 which are relevant to the ratemaking and classification issues in this proceeding. The mere fact that a particular subject is mentioned in passing – as thousands are in the course of an omnibus rate proceeding – does not make every aspect of that subject relevant to that rate proceeding. Accordingly, the Postal Service stands by its May 22, 2000, objections to DBP/USPS-231 through 238.

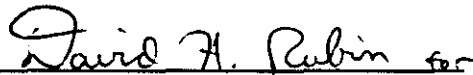
For these reasons, the Motion To Compel should be denied.

Respectfully Submitted,

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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