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PRESIDING OFFICER'S
RULING NO. R2000-1087

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

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 31st MOTION

(Issued July 5, 2000)

On May 31, 2000, David B. Popkin filed a motion to compel responses from the Postal Service to some fifteen interrogatories.¹ That motion followed a series of objections by the Postal Service, which argued, variously and as a general matter, that the interrogatories were cumulative, burdensome, irrelevant, and untimely.² On June 7, 2000, the Postal Service submitted its opposition to the motion, supplementing its previous arguments.³ The motion is denied, except for DBP/USPS-208(d), which is granted.

¹ Motion to Compel Responses to Interrogatory [sic] DBP/USPS-207(a)-(j), 208(d), 219, 222-224, and 230-238 and Motion for Late Acceptance (if Necessary), May 31, 2000 (Motion). Since no participant challenged the timeliness of the Motion, it shall, as a matter of administrative convenience, be treated as timely filed. Consequently, the contingent Motion for Late Acceptance is dismissed as moot.

² Objection of the United States Postal Service to Interrogatories of David B. Popkin (D[BP]/USPS-207(a)-(j), 208(d), and 212(a)), May 15, 2000 (Objection 1); Objection of the United States Postal Service to Interrogatory of David B. Popkin (D[BP]/USPS-219), May 15, 2000 (Objection 2); Objection of the United States Postal Service to Interrogatories of David B. Popkin (D[BP]/USPS-222-224), May 15, 2000 (Objection 3); Objection of United States Postal Service to Popkin Interrogatory (DBP/USPS-230), May 22, 2000 (Objection 4); and Objection of the United States Postal Service to Popkin Interrogatories DBP/USPS-231 Through 238, May 22, 2000 (Objection 5).

³ Opposition of the United States Postal Service to Motion of David B. Popkin to Compel Responses to Interrogatories of David B. Popkin (D[BP]/USPS-207(a)-(j), 208(d), 219, 222-224, and 230-238), June 7, 2000 (Opposition).

DBP/USPS-207(a)-(j). This interrogatory, which was filed under seal as a follow-up to *DBP/USPS-145*, requests, among other things, historic information concerning post office box fee groups and an explanation why some current Fee Group C locations, including Englewood Cliffs, New Jersey, were considered (or chosen) for inclusion in Fee Group A or B. Citing each subpart, the Postal Service objected on numerous grounds.⁴ For example, concerning the historic information sought, *e.g.*, when and the basis for establishing Fee Groups A and B, the Postal Service argued that witness Kaneer not only addressed these matters in his testimony, but also responded to previous interrogatories on the subject. Thus, according to the Postal Service, subparts (a)-(e) “are cumulative, untimely and not proper follow-up to the response to interrogatory *DBP/USPS-145*.”⁵ In support of his motion, Mr. Popkin indicates that the information is desired to brief the Postal Service’s box rent proposal “since the extent to which previous action to change rates from Fee Group C to either A or B will have an [a]ffect on the proposed rates in this Docket because of the overlap of box rental costs.”⁶

In his direct testimony, witness Kaneer discusses, among other things, the proposal from Docket No. R90-1 to establish Fee Groups A and B.⁷ In addition, the Postal Service cites record evidence of prior interrogatories from Mr. Popkin generally addressing the same topic, *i.e.*, box rents.⁸ Certainly, in light of this, the Postal Service’s arguments appear reasonably compelling, a result which goes unrebutted by Mr. Popkin’s failure to address any of them. Moreover, his vague rationale in support of

⁴ Objection 1 at 1-3.

⁵ *Id.* at 1. The Postal Service also addressed the remaining subsections, detailing its objections as appropriate, *e.g.*, cumulative and burdensome. *id.* at 2-3. Witness Yezer did respond, under seal, to subparts (k), (l), and (m).

⁶ Motion at 1.

⁷ Direct Testimony of Kirk T. Kaneer, *USPS-T40* at 2-3.

⁸ Objection 1 at 1, citing *Tr. 14/5731* and *5737*.

his motion is insufficient to overcome the Postal Service's specific objections. Accordingly, the motion is denied.

DBP/USPS-208(d). This interrogatory, which follows-up DBP/USPS-146 and was filed under seal, inquires about the rental cost for the Englewood Cliffs, New Jersey facility. Witness Yezer answered DBP/USPS-208, except subpart (d) which requests a copy of the contract for the facility. The Postal Service objects, claiming burden, relevance, and redundancy.⁹ In addition, the Postal Service indicates it did not rely on the contract, and that the numbers that were used "have already been provided to Mr. Popkin."¹⁰ In his motion, Mr. Popkin states that the contract "is desired to fully evaluate the data which [were] presented for Englewood Cliffs."¹¹

The Postal Service's objections are not persuasive. For example, the claim of burden apparently is predicated solely on the contract being located at the Englewood Cliffs facility.¹² Under the circumstances, obtaining a copy of the contract hardly qualifies as burden. Similarly, claims of relevance and redundancy cannot be assessed in a vacuum. The Postal Service (or one of its witnesses) has responded to several interrogatories concerning rent calculations generally and those affecting the Englewood Cliffs facility specifically.¹³ Although the Postal Service indicates that contact data used were "only minor inputs to witness Yezer's regression analysis,"¹⁴ and that the figures have already been provided, participants are, nonetheless, entitled an opportunity to review the underlying contract. While that review may ultimately validate the Postal Service's contentions, the opportunity for review cannot be denied based on a representation that the numbers have been provided. Accordingly, the Postal Service is directed to file, under the protective conditions applicable to the

⁹ Objection 1 at 3.

¹⁰ *Ibid.*

¹¹ Motion at 1.

¹² See Objection 1 at 3.

¹³ See, e.g., DBP/USPS-7, 113, 145, 146, 207-209.

response to DBP/USPS-146, a copy of the contract, which shall be available to individuals who certify their compliance with those conditions.¹⁵

DBP/USPS-219. In response to DBP/USPS-170, the Postal Service offered illustrations demonstrating exceptions to the general practice that mail is processed on the day collected. One example was a retail office for which the last dispatch of the day occurred at 4 P.M., although the facility remained open until 5 P.M. In DBP/USPS-219, Mr. Popkin asks "shouldn't the last dispatch be 5 PM or later?" The Postal Service objects on the basis of relevance.¹⁶ In his motion, Mr. Popkin states "[t]he response to DBP/USPS-219 is needed to clarify the response previously given to DBP/USPS-170(b) by indicating that all offices should have a final dispatch of 5 PM or later."¹⁷

The Postal Service's answer to DBP/USPS-170 was useful and fully responsive, providing examples dovetailed to the question asked. That response left nothing "to clarify" regarding the dispatch times of retail offices. Mr. Popkin has failed to demonstrate that operational details concerning the dispatch times of hypothetical retail offices are relevant to the Commission's deliberations in this proceeding. The Postal Service's objection is sustained.

DBP/USPS-222. In responding to DBP/USPS-44 and 157, the predecessors to this interrogatory, Witness Mayo provided information concerning certified and insured mail receipts, including integration with and use of the POS-1 system. DBP/USPS-222, a multi-part interrogatory, requests, among other things, details related to the POS-1 system, e.g., reverse lookup procedures. The Postal Service objects, arguing that the operational details requested are irrelevant to issues in this proceeding.¹⁸ In addition, the Postal Service contends that certain subparts are unrelated to the prior response,

¹⁴ Opposition at 1-2.

¹⁵ See POR R2000-1/11, March 10, 2000; see *also* Library Reference LR-I-241.

¹⁶ Objection 2 at 1.

¹⁷ Motion at 1.

¹⁸ Objection 3 at 1.

and thus “are not proper follow-up.”¹⁹ As the basis for his motion, Mr. Popkin states only that “[t]he response to DBP/USP-222 will affect the window costs for acceptance of [c]ertified [m]ail.”²⁰

Mr. Popkin has made no effort to address the Postal Service’s objection, and his reference to “window costs” is too oblique and attenuated to justify production of the information sought. Accordingly, the motion is denied.

DBP/USPS-223. Subpart (a) of this interrogatory, a follow-up to DBP/USPS-158, inquires whether a return receipt on which the “mailer [made] a change to the data” subsequent to its receipt could “potentially affect the validity of the receipt as a legal document[.]” Subpart (b) requests an explanation of an employee’s actions in response to an appropriate change. The Postal Service objects on the basis of relevance, that subpart (a) seeks a legal conclusion, and that it has no responsive information.²¹ Mr. Popkin argues that “[t]he response . . . relates to the value of service for return receipts that are not properly completed when they only show the month and date of delivery and do not show the year.”²²

DBP/USPS-223 represents the latest in a series of interrogatories from Mr. Popkin challenging the wisdom of omitting the year of delivery from the return receipt.²³ Subpart (a), by its terms, seeks a legal opinion. Accordingly, the Postal Service’s objection is sustained. In his motion, Mr. Popkin ignores subpart (b). His statement concerning value of service appears to focus solely on the information requested in subpart (a). In any event, he neither addressed the Postal Service’s objection nor

¹⁹ *Ibid.* In its Opposition, the Postal Service further argued that “responses would not be useful for addressing issues in this proceeding.” Opposition at 3.

²⁰ Motion at 1.

²¹ Objection 3 at 1-2; see also Opposition at 3-4.

²² Motion at 2.

²³ See, e.g., DBP/USPS-45(e)-(f) and DBP/USPS-158(d); see also Presiding Officer’s Ruling R2000-1/68, May 23, 2000, at 2-3.

demonstrated that the information sought was likely to lead to the discovery of admissible evidence. Hence, the motion is denied.

DBP/USPS-224. Witness Mayo answered DBP/USPS-159(b), declining to confirm “that it is no longer possible to purchase return receipt service showing the address where the article was delivered.”²⁴ Taking exception to the answer, Mr. Popkin distinguishes the current service from that which “was eliminated several years ago,” and, in DBP/USPS-224, requests the Postal Service to redo its answer to DBP/USPS-159(b). The Postal Service objects, arguing that witness Mayo’s answer was fully responsive since, among other things, the customer would be informed of the delivery address if different from the mailing address.²⁵ In his motion, Mr. Popkin states that a response is needed to provide record support indicating that return receipt service previously included “Address Where Delivered” and that that feature “was absorbed into the present service.”²⁶

Witness Mayo’s answer to DBP/USPS-159(b) was responsive, rendering DBP/USPS-224 cumulative. Moreover, as noted by the Postal Service, the rationale offered by Mr. Popkin as support for his motion is unrelated to DBP/USPS-224.²⁷ That information, the Postal Service volunteered, could be found in the record and Recommended Decision in Docket No. MC96-3.²⁸ The motion is, therefore, denied.

DBP/USPS-230. This multi-part interrogatory, characterized as a follow-up to questions posed to witness Robinson at the hearing, seeks confirmation of miscellaneous information, *e.g.*, the mileage associated with various zones and the extent of window clerks’ knowledge of service standards. In addition, as a separate subpart, Mr. Popkin resubmits DBP/USPS-71, notwithstanding that it was subject to

²⁴ See Response of United States Postal Service Witness Mayo to DBP/USPS-159(b).

²⁵ Objection 3 at 2. The Postal Service concludes, therefore, that the request is cumulative. *Id.* at 3.

²⁶ Motion at 2.

²⁷ Opposition at 4.

²⁸ *Ibid.*

then pending motions practice. The Postal Service objects, arguing that the various subparts are untimely and, in certain instances, irrelevant.²⁹ Mr. Popkin contends that DBP/USPS-130 is timely and proper follow-up because, *inter alia*, it relates to witness Robinson's response and is "needed to clarify the misleading data which [are] being provided by the Postal Service to the mailing public"³⁰

The claim that the various subparts of DBP/USPS-230 relate to witness Robinson's response is neither adequately supported nor, in most instances, apparent. For example, while it may be that clerks rely on retail terminals, Mr Popkin provided no rebuttal to the Postal Service's contention that the issue of retail terminals was raised early in this proceeding, making a pretext of the claim that subpart (a) was triggered by witness Robinson's response.³¹ Furthermore, there is no apparent nexus between subparts (b)-(h), concerning postal zones, and the response suggesting that the former stems from the latter. Finally, Mr. Popkin's resubmission of DBP/USPS-71 is wholly inappropriate.³² The motion is denied.

DBP/USPS-231-238. The genesis of this series of interrogatories is the Postal Service's response to a question posed by Commissioner Goldway at the hearing held April 25, 2000. The response, provided by witness Mayes, addresses service standards generally, indicating, among other things, that no operational manual exists which explains the development of service standards, but attaching a memorandum describing the policy for requesting a change in the current service standards. As the following illustrate, the information sought by Mr. Popkin runs the gamut: DBP/USPS-231 consists of three previously submitted interrogatories or parts thereof, which at the

²⁹ See Objection 4. Expanding on its objection, the Postal Service contends, among other things, that certain information sought is unrelated to the response it purports to follow up. To that end, the Postal Service expresses its concern that follow-up to questions posed at the hearing not become a vehicle for unwarranted extensions of the discovery period. Opposition at 5.

³⁰ Motion at 2. In addition, he states that his failure to ask these questions earlier is irrelevant. *Ibid.*

³¹ In addition, subpart (j) is too vague to be answered meaningfully. Compare with DFC/USPS-93.

³² See POR R2000-1/74 at 1-2.

time of their resubmission, were subject to then pending motions practice;³³ DBP/USPS-232 seeks a listing of every service standard change subsequent to Docket N89-1; and DBP/USPS-235 requests examples of the documentation found, alternatively, adequate and inadequate, to support a service standard change from overnight to 2-day.

The Postal Service objects, arguing generally that the information requested is irrelevant to this proceeding. In support, the Postal Service relies principally on an earlier ruling which held that “[i]nquiries concerning the criteria employed by the Postal Service to develop delivery standards, . . . , are one step removed from, and therefore of limited relevance to issues before the Commission in general rate proceedings.”³⁴ In addition, the Postal Service provided information responsive to two of the interrogatories at issue. Specifically, it responded to DBP/USPS-237, explaining, by way of examples, that information concerning “Customer Needs” was not reduced to a generic listing.³⁵ Further, while preserving its objection to DBP/USPS-234, the Postal Service indicated that it would (and subsequently did) submit a copy of the FY 2000 Q 3 Standards diskette as a Library Reference LR-I-336.³⁶ In his motion to compel Mr. Popkin states simply that he is “trying to clarify and follow-up on the material presented.”³⁷

Hearings before the Commission require, from time-to-time, that a witness provide written responses to questions posed at the hearings. This may occur, for example, to provide the witness with an opportunity to review files or data, or to consult

³³ Specifically, Mr. Popkin requests that DBP/USPS-70(a)-(k), 71, and 72(f)-(i), which at the time he mailed this discovery request were subject to pending motions practice, be considered follow-up to witness Mayes’s response. Mr. Popkin’s motion to compel a response to DBP/USPS-70(a)-(k), 71, and 72(f)-(i) was denied in POR R2000-1/59, issued May 10, 2000. As with each of his prior attempts, Mr. Popkin’s resubmission of these interrogatories is wholly inappropriate.

³⁴ See Objection 5 at 2-5, citing POR R2000-1/59 at 5.

³⁵ Objection 5 at 4-5. The Postal Service also explained the acronym NASS, which was the subject of DBP/USPS-239. *Id.* at 3, n.1.

³⁶ Objection 5 at 3; see also Opposition at 6.


³⁷ Motion at 2.

with other individuals. This practice, which serves, in essence, to supplement the witness's oral testimony, is designed to facilitate the development of the record. It is not intended to give license to unfettered follow-up discovery. This is not to suggest that the opportunity for follow-up is foreclosed. Rather, limited follow-up may be permitted, upon a showing, if necessary, that, at a minimum, that the follow-up relates directly to the response, could not reasonably been asked earlier, and is likely to lead to the discovery of admissible evidence.

Confronted with detailed objections to his interrogatories, Mr. Popkin is obliged to do more than state the obvious. By definition, a follow-up serves to clarify a prior response. Hence, the suggestion that the follow-up is "trying to clarify . . . the materials presented" provides no support for the motion since, among other things, it neither rebuts the Postal Service's arguments nor demonstrates that the information sought is likely to lead to the discovery of admissible evidence.³⁸ For these reasons, the motion is denied.

RULING

1. Pursuant to the foregoing, David B. Popkin's motion to compel, filed May 31, 2000 and identified in footnote 1 above, is denied, except as respects DBP/USPS-208(d).
2. The contingent Motion for Late Acceptance, identified in footnote 1 above, is dismissed as moot.


Edward J. Gleiman
Presiding Officer

³⁸ Also problematic is the motion's sweeping inclusiveness, failing, as it does, to differentiate those interrogatories which the Postal Service answered at least in part.