

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

RESPONSE OF UNITED STATES POSTAL SERVICE TO MOTIONS OF DAVID B.  
POPKIN TO COMPEL RESPONSES TO DBP/USPS-246 and DBP/USPS-247-53  
(July 5, 2000)

The United States Postal Service hereby responds to Mr. David Popkin's Motion to Compel Response to DBP/USPS-246 (Motion I), and Motion to Compel Responses to DBP/USPS Interrogatory DBP/USPS-247-253 [sic](Motion II), both filed June 28, 2000.<sup>1</sup> In anticipation of Mr. Popkin's approach, the Postal Service provided substantially all potential responses in the Objection of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-246) (Objection I), filed on June 12, 2000, and Objection of United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-247-253) (Objection II), filed on June 16, 2000. The Motions do little to advance the record or arguments on these interrogatories; accordingly, except as appended below, the Postal Service rests on the Objections.

Mr. Popkin's disregard for the gravity of an omnibus rate proceeding is patent in Motion I, which states in its substantive entirety:

The Postal Service is attempting to confuse my interrogatory between those individuals at non-delivery offices who are ELIGIBLE for Fee Group E rates [a free box] and those individuals who obtain a post office box at the same non-delivery office but must pay the Fee Group D rates because they are eligible for free delivery at another facility.

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<sup>1/</sup> With respect to interrogatory DBP/USPS-246, Mr. Popkin's motion to compel is two days late, and the Postal Service opposes it on that basis also.

The undersigned counsel, who helped write the regulations regarding Group E post office box service, is unable to parse this sentence. How one might ever "attempt to confuse an interrogatory between individuals" escapes my limited grasp. Mr. Popkin makes no apparent attempt to tie this statement to the interrogatory, or otherwise respond to the Postal Service objection. In any event, as the Objection makes clear, Mr. Popkin is really just perpetuating his argument with the response to DBP/USPS-212(b). That is not an appropriate use of discovery.<sup>2</sup>

Moreover, no basis exists for a claim that the Postal Service is trying to confuse two categories of customers at non-delivery offices, those who are eligible for Group E fees, and those who are not because they are eligible for carrier delivery at another facility. While the Postal Service did note this distinction in its response to interrogatory DBP/USPS-212, the Postal Service's objection assumed the possibility of customers who are eligible for Group E fees, and still raised several bases for objection that have not been addressed by Mr. Popkin (timeliness, relevance, burden, and lack of specific factual foundation). The Postal Service rests on its objection.

While Mr. Popkin claims that physical service of Objection II has yet to be received, he evidently was able to obtain a copy for his Motion II does address in certain limited respects the content of the objection.<sup>3</sup> Thus, to the extent his claim is true, he evidently suffered no prejudice as a result.<sup>4</sup>

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<sup>2</sup> Counsel did discuss Group E post office box service, and its intent and application, with Mr. Popkin informally earlier in this case. It appears that the attempt to explain it was not overly successful.

<sup>3</sup> A copy of the Objection was included with the revised response of witness Yezer to DBP/USPS-209(o) Express Mailed to Mr. Popkin. The Postal Service web site shows that Express Mail piece EJ804419245US was delivered at 7:26 a.m. on June 17, 2000 in Englewood Cliffs, New Jersey.

<sup>4</sup> On July 3, 2000 Mr. Popkin telephoned the offices of counsel for the Postal Service to  
(continued...)

In paragraph 2 of his Motion II, Mr. Popkin advances as an excuse to the late filing of his interrogatories the novel legal theory that his travel arrangements for business and pleasure work automatically to toll the time deadlines for motions practice. The worth of this argument is entirely consistent with the complete absence of legal authority to support it.

In paragraph 3 of his Motion II (regarding DBP/USPS-247), Mr. Popkin flat out admits that he is just arguing the semantics of a previously supplied answer:

I am trying to confirm that while the data in column 6 [of zplist4] is not used **directly** to determine the box rent rental fee groups, it is used **directly** to determine the box rent fee groups by ascertaining which range of dollar values it falls into. The Postal Service should not be allowed to make a statement that Erents are not used **directly** to determine fees when apparently they are used directly to determine fees by the ranges of the values. [Emphasis added.]

(The previous chain of interrogatories and responses is already quoted in the Objection.) Mr. Popkin evidently has his own views of what constitutes "directly", and he needs no additional interrogatory response to argue his characterization on brief.

In paragraph 4 of his Motion II (regarding DBP/USPS-248), Mr. Popkin argues that the interrogatory consists of his fourth attempt to obtain information that has already been made available. He further illustrates his ability to abuse the ratemaking process for his own perceived ends by arguing that repeating a question somehow makes it "not redundant".

In paragraph 5 of his Motion II (regarding DBP/USPS-249), Mr. Popkin continues to argue his disagreement with witness Yezer's previous response to DBP/USPS-

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<sup>4/</sup> (...continued)

indicate that he had not been receiving physical delivery of hard copy over a specified period of time. The Postal Service is seeking to determine how this may have happened. However, Mr. Popkin could not identify or otherwise describe any document whose alleged lack of service actually affected his ability to participate in this docket, apparently thanks to the exemplary efforts underlying the Commission's web site.

206(h). Mr. Popkin's seeming inability to understand how econometric research can generate negative estimates of Erents should not serve as the basis for ongoing, late interrogatories.

In paragraph 6 of his Motion II (regarding DBP/USPS-250), Mr. Popkin simply continues his argument, which he is free to make on brief, that witness Yezer misuses the data he was provided and that the data do not conform with Mr. Popkin's understanding of the facility in Englewood Cliffs, New Jersey. The Postal Service has not studied the specifics of each of the tens of thousands of facilities used to develop the new proposed post office box groups and fees. Nor can it reasonably be expected to do so in the limited time frame of an omnibus rate case.

In paragraphs 7 and 8 of his Motion II (regarding DBP/USPS-251-53), Mr. Popkin continues his efforts to "understand the calculations" used by witness Yezer. Through witness Yezer's discovery responses, the Postal Service believes it has been quite helpful in showing Mr. Popkin how witness Yezer's equations can be applied to particular facilities. However, it is not the job of the Postal Service to teach Mr. Popkin advanced economics and mathematics in the context of a ratemaking proceeding. The equations are spelled out explicitly in the materials filed with the Commission; if Mr. Popkin is unable to understand them then let him hire a suitable expert to assist him – just as any other participant in these proceedings does.

Wherefore, the United States Postal Service maintains its objections to interrogatories DBP/USPS-246 to 253.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking



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Kenneth N. Hollies

**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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Kenneth N. Hollies

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