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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. R2000-1/98

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
DENYING DAVID B. POPKIN'S MOTIONS TO COMPEL RESPONSES
TO INTERROGATORIES DBP/USPS-246 AND DBP/USPS-247-253

(Issued July 26, 2000)

Separate motions to compel responses to interrogatory DBP/USPS-246 and DBP/USPS-247-253 were filed by Mr. Popkin on June 28, 2000.¹ The motions seek to compel answers to follow-up interrogatories concerning postal facility rent estimates related to witnesses Yezer's and Kaneer's testimony.²

The Postal Service generally objects to follow-up interrogatories DBP/USPS-247-253 on the grounds of redundancy, lateness, improper follow-up, argumentativeness, and irrelevance.³ The answers that are the subject of the follow-up interrogatories were filed on May, 17, 2000.⁴ The follow-up interrogatories were filed 20 days later, on June 6, 2000. Rule 26(a) states:

¹ Motion to Compel Responses to DBP/USPS Interrogatory DBP/USPS-246 (filed June 28, 2000). Motion to Compel Responses to DBP/USPS Interrogatory DBP/USPS-247-253 (filed June 28, 2000).

² Follow-up Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS 244-246] and Motion for Late Acceptance [if Necessary] (filed May 31, 2000). Follow-up Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS 247-253] (filed June 6, 2000).

³ Objection of United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-247-253) (filed June 16, 2000).

⁴ Response of United States Postal Service Witness Yezer to Interrogatories of David B. Popkin, Redirected From the Postal Service (DBP/USPS-206-209, 211, 216-217), Revised Response to Interrogatory DBP/USPS-155, and Refiling of Response to Interrogatory DBP/USPS-146 (filed Under Protective Seal) [Erratum] (filed May, 17, 2000).

Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answers to the previous interrogatories unless extraordinary circumstances are shown.

Mr. Popkin alleges that he was on vacation and a business trip, and effectively did not receive physical service of the original responses until May 27, 2000. The follow-up interrogatories, having been filed 20 days after the original answers were filed and 10 days after physical receipt of the original answers, are untimely. Therefore, the Motion to Compel is denied.

Mr. Popkin has engaged in protracted discovery related motions practice in this case. Although the motion to compel answers to interrogatories DBP/USPS-247-253 is denied because the follow-up interrogatories were not timely, the individual interrogatories are reviewed in this ruling for substance to help inform Mr. Popkin on the standards applied to follow-up discovery in the expectation that this will facilitate effective participation in future cases.

The Postal Service filed a separate objection to DBP/USPS-246 on June 12, 2000.⁵ The basis of the objection is that an answer was previously provided, thus the interrogatory is cumulative. As alternative bases, the Service contends the interrogatory is untimely, irrelevant, burdensome, and lacks any factual foundation. Mr. Popkin's motion to compel was filed on June 28, 2000, 16 days after the Postal Service objection was filed. Rule 26(d) states:

Motions to compel a more responsive answer, or an answer to an interrogatory to which an objection was interposed, should be filed within 14 days of the answer or objection to the discovery request.

Thus, the motion to compel is untimely. Furthermore, the follow-up interrogatory itself, filed on May 31, 2000, was untimely—14 days after the original response and thus 7

⁵ Objection of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-246) (filed June 12, 2000).

days late.⁶ As with the interrogatories discussed above, DBP/USPS-246 shall also be reviewed for substance.

The Postal Service has also provided a response to the motions to compel.⁷ The response supplements the Postal Service arguments provided in its objections to the motions. Each interrogatory and accompanying objection is reviewed below.

DBP/USPS-246. This interrogatory requests the Postal Service to re-answer interrogatory DBP/USPS-212(b), and to focus on the word "eligible." DBP/USPS-212(b) states: "I am aware of non-delivery offices that are charging box rents for eligible Fee Group E individuals. Are these individuals entitled to obtain a refund, and if so, how far back may they go?" The Postal Service, having previously provided a response to DBP/USPS-212(b), objects to answering DBP/USPS-246 because it is cumulative. In his motion to compel, Mr. Popkin alleges the Postal Service answer is attempting to confuse two categories of customers at non-delivery offices. I have reviewed the answer to DBP/USPS-212(b) and conclude that it has been adequately answered. A narrative response was provided that attempts to avoid possible confusion, and specific DMM sections are cited. A more detailed response requested by DBP/USPS-246 would not further the record.

DBP/USPS-247. This interrogatory references the answer to interrogatory DBP/USPS-206(b-d) which requested the significance of certain dollar values in witness Yezer's data, and how those values will be used in determining box rents. Witness Yezer provided an answer that identified what the dollar values represent, and his understanding of how witness Kaneer uses the information. Interrogatory DBP/USPS-247 asks the Service to confirm that the dollar values in witness Yezer's data are the

⁶ Follow-up Interrogatories of David B. Popkin to the United States Postal Service [DBP/USPS-244-246] and Motion for Late Acceptance [if Necessary] (filed May 31, 2000). The answer followed up by DBP/USPS-246 is Response of United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-212(b)) (filed May 17, 2000). Mr. Popkin alleges the delay in filing the follow-up interrogatory was caused by a vacation and business trip. Therefore, a motion for late acceptance is included with the follow-up interrogatory. This motion is effectively mute because the motion to compel is also untimely.

⁷ Response of United States Postal Service to Motions of David B. Popkin to Compel Responses to DBP/USPS-246 and DBP/USPS-247-53 (filed July 5, 2000).

same dollar values that appear in witness Kaneer's testimony. In his motion, Mr. Popkin argues that witness Yezer's numbers are used directly by witness Kaneer, not indirectly as alleged by witness Yezer in his response to interrogatory DBP/USPS-206(b-d). The Postal Service argues that this interrogatory is late, and only argues the semantics of the word "directly." I disagree, in general, with the Postal Service argument that an interrogatory that only clarifies the "semantics" of a response is a reason for objection. However, upon reviewing the documentation before me, I conclude the initial answer is clear, and that Mr. Popkin has sufficient information on his point. Denying a further response from the Postal Service should not hinder Mr. Popkin's discussion of the issue.

DBP/USPS-248. This interrogatory requests the Postal Service to re-answer interrogatory DBP/USPS-206(g). Interrogatory DBP/USPS-206(g) requests a list of facilities with imputed rents that are negative and whether these facilities are located in rented or government owned facilities. The Postal Service objects to this interrogatory alleging that it is cumulative or redundant, improper follow-up, and late. Upon reviewing the answer to DBP/USPS-206(g), I conclude that the Postal Service has answered the question. The answer directs Mr. Popkin to the file that contains the information requested, and provides insight into the ownership of the properties. A further response is not required of the Postal Service.

DBP/USPS-249. This interrogatory requests an explanation related to the possible accuracy of the Erent data. It is a follow-up question to interrogatory DBP/USPS-206(h), which in turn is related to interrogatory DBP/USPS-144. The Postal Service objects alleging this interrogatory is cumulative or redundant, argumentative, improper follow-up, and late. I have reviewed the answers to interrogatories DBP/USPS-144 and DBP/USPS-206(h). The answers to these interrogatories are responsive. This question is neither designed to clarify, nor is it likely to lead to the production of admissible evidence. The Postal Service has repeatedly explained the significance of Erents and what would amount to a further explanation would only be cumulative. A further response is not required of the Postal Service.

DBP/USPS-250. This is a follow-up interrogatory to DBP/USPS-208, which is a follow-up interrogatory to DBP/USPS-146. All three interrogatories request details of a particular postal facility that Mr. Popkin is attempting to correlate with alleged actual observations and the facilities data used in the post office box proposal. The Postal Service objects based on redundancy, improper follow-up, lateness, and irrelevance. The Service has answered multiple interrogatory questions on this particular facility and how witness Yezer analyzed the data for the facility. Mr. Popkin appears to be arguing that there are flaws in the data used by witness Yezer. The Postal Service understandably points out that it has not, nor was it reasonable to, study the specifics of each of the tens of thousands of facilities used to develop the post office box proposal. Mr. Popkin has sufficient information to argue his points on brief. The cumulative nature of this questioning at this point in time is improper follow-up.

DBP/USPS-251. This interrogatory is an eight-part follow-up to interrogatory DBP/USPS-209 which itself contained 23 individual question. DBP/USPS-209 is a follow-up to DBP/USPS-146 and is related to DBP/USPS-250 above. All of the interrogatories ask questions about a particular postal facility as it relates to the post office box calculations. The Postal Service objects because the interrogatory is cumulative, argumentative, improper follow-up, late, and irrelevant. Mr. Popkin alleges he is only trying to understand the calculations made by the Postal Service. In reviewing the responses to the interrogatories, the Postal Service has given ample explanations for what it has done. The questions contained in DBP/USPS-251 are either new questions or seek to expand questions already answered. As in the ruling on DBP/USPS-250, this is not a proper use of follow-up interrogatories.

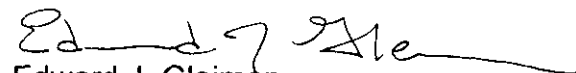
DBP/USPS-252. This interrogatory is a follow-up to DBP/USPS-211, which in turn is a follow-up to DBP/USPS-148. Each question concerns the use of generic input data when the Postal Service did not have actual data for a specific postal facility. The Postal Service objects because the interrogatory is cumulative, argumentative, late, improper-follow-up, irrelevant and not intended to lead to the discovery of admissible evidence. Mr. Popkin again alleges he is only trying to understand the calculations

made by the Postal Service. Upon review of the initial interrogatories, I conclude that the Postal Service adequately answered the initial questions. I agree with the Postal Service in observing that Mr. Popkin may have a fundamental misunderstanding of the technical approach employed and that these questions could have been asked earlier. The chance that this line of questioning will lead to further admissible evidence is minimal. The Postal Service does not have to provide an answer to this interrogatory.

DBP/USPS-253. This interrogatory requests the Postal Service to re-answer interrogatory DBP/USPS-155(b) in a similar format to the answer of interrogatory DBP/USPS-209. Interrogatory DBP/USPS-155(b) requests derivation of a cost value for a particular postal facility. The answer to DBP/USPS-155(b) directs Mr. Popkin to a library reference that contains the data, and witness Yezer's testimony for the derivation. The answer to DBP/USPS-209 provides an example of this derivation in exceptional detail for another postal facility. The Postal Service objects alleging this interrogatory is cumulative, late, improper follow-up, and not reasonable calculated to lead to the discovery of admissible evidence. Upon reviewing the interrogatories and responses, I conclude that having the Postal Service repeat a calculation for a second postal facility is redundant and will not add to the record. Furthermore, Mr. Popkin apparently has sufficient information to duplicate this calculation on his own. A further response is not required of the Postal Service.

RULING

1. The following Motions to Compel are denied:
 - a. Motion to Compel Responses to DBP/USPS Interrogatory DBP/USPS-246 (filed June 28, 2000).
 - b. Motion to Compel Responses to DBP/USPS Interrogatory DBP/USPS-247-253 (filed June 28, 2000).


Edward J. Gleiman,
Presiding Officer