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OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. C2001-3/3

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Complaint on First-Class Mail Standards

Docket No. C2001-3

PRESIDING OFFICER'S RULING ON
POPKIN MOTIONS TO COMPEL RESPONSES TO
CERTAIN INTERROGATORIES DIRECTED
TO THE UNITED STATES POSTAL SERVICE

(Issued November 14, 2001)

This document addresses matters raised in two Motions filed by David B. Popkin pertaining to certain interrogatories directed to the Postal Service.¹ Some issues have been mooted by the Service's withdrawal of objections, the submission of answers or revised answers, and the production (or promise to produce) responsive documents as library references.² The Service indicates that in a few instances, preparation of some answers, especially those that entail compilation of library reference material, has been

¹ Motion to Compel Response to Interrogatories [Both Those That Have Been Objected To As Well As Those That Have Not Been Fully Responded To], Comments on POR C2001-3/1, and Potential Motion for Late Acceptance, October 15, 2001, (First Popkin Motion) and Motion to Compel Response to Interrogatories [Both Those That Have Been Objected To As Well As Those That Have Not Been Fully Responded To], October 29, 2001 (Second Popkin Motion). The First and Second Popkin Motions are also referred to collectively as "the Popkin Motions" or "the Motions." Mr. Popkin filed a document entitled "Correction To Motion to Compel Response to Interrogatories [Both Those That Have Been Objected To As Well As Those That Have Not Been Fully Responded To]" on November 5, 2001. This document notes that a reference on page 3 of the Second Popkin Motion to DPB/USPS-50 and 51 should have been to DBP/USPS-49 and 50.

² The referenced Postal Service filings include answers to the interrogatories; several library references; a set of formal objections; and two formal oppositions. They are identified as follows: Objections of the United States Postal Service to Interrogatories of David Popkin, October 1, 2001, Postal Service Objections (First Set); Objections of the United States Postal Service to Interrogatories of David Popkin, October 22, 2001, Postal Service Objections (Second Set); Opposition of the United States Postal Service to Motion of David Popkin to Compel Responses to Interrogatories, October 22, 2001 (First Postal Service Opposition); and Opposition of the United States Postal Service to Motion of David Popkin to Compel Responses to Interrogatories, November 5, 2001 (Second Postal Service Opposition).

hampered by the need to devote resources to responding to developments since September 11, 2001.³ The Service's efforts to meet ongoing discovery obligations under these conditions are appreciated.

Given the number and timing of underlying filings, the status of essentially all interrogatories placed in issue by the Popkin Motions are addressed. Those not specifically mentioned have been resolved in the course of the pleadings, without the need for a specific ruling.

Subparts (a), (c), (e) and (f) of DBP/USPS-1 and 2. The referenced subparts ask, in question 1, for numerous details about Clearance Times (CTs) and, in question 2, for essentially the same information about Critical Entry Times (CETs). In (a), Mr. Popkin asks whether CTs and CETs for each Processing and Distribution Center (P&DC) are the same for each type of processing date; in (b), he asks whether there are differences in CTs and CETs at a given P&DC, other than for three established standards (overnight, 2-day and 3-day). Subparts (c) and (d) ask for the activities (and approximate times) that occur between the CT and dispatch and between arrival of mail and the CET, as well as for a list of all CTs and CETs for each P&DC.

The Service generally objects to answering these questions on grounds that they seek information that is not relevant or necessary to the resolution of issues in this proceeding. Postal Service Objections (First Set) at 2; First Postal Service Opposition at 3. In particular, the Service asserts that the subpart (a) inquiries *are* relevant to Docket No. C2001-1, but not to this docket, and contends that this case should not be used as a conduit for exploring issues related to daily and holiday variations in mail processing. Postal Service Objections (First Set) at 2. *Ruling:* the Motion is not granted. The nexus between the requested information and the resolution of issues raised in this complaint is tenuous, at best; moreover, the sheer number of P&DCs for which a response would be required would create an undue burden.

DBP/USPS-4(c)-(e) and (f). These questions address mailflows between P&DCs and intermediate facilities. Subpart (c) asks about utilization of intermediate facilities;

³ These relate to the terrorist attacks on September 11, 2001 and the later distribution of anthrax through the mail system.

(d) seeks a list of intermediate facilities; and (e) asks for details about mail movements from each P&DC to every other P&DC. Subpart (f) seeks an explanation of any items not confirmed. The Service objects on grounds that the “minutiae” requested here are not necessary or relevant to a resolution of the issues in this proceeding, and asserts that the service standards “are what they are, irrespective of the manner in which mail flows within or between facilities.” Postal Service Objections (First Set) at 4; First Postal Service Opposition at 4. Popkin, on the other hand, contends that the methods used to provide existing transportation are relevant to an evaluation of the extent to which these standards meet the requirements of the Act, such as adequacy of mail service and nondiscrimination. Moreover, he contends that the Service’s position regarding service standards does not allow public evaluation of compliance with the Act. First Popkin Motion at 3. *Ruling:* as to subpart (c), the Motion is granted in part. It would be useful if the record contained a brief description of the general role of intermediate facilities, and the Service is directed to provide an answer supplying this type of information. As to subpart (d), the Motion is deemed moot, as the Service says the requested list was provided as part of Library Reference 1 in response to OCA/USPS-12(b). *Id.* at 5. As to subpart (e), the Motion is denied, given that the level of detail requested does not appear to be material or relevant to essential issues in this case. It is not necessary to the Commission’s determinations in this case to know the details of the mail flows between P&DCs, or every activity that occurs at intermediate facilities. Subpart (f) – regarding certain confirmations – does not appear to be in issue at this point.

DBP/USPS-5(a)-(c) and *DBP/USPS-6(b)-(c)*. These questions, respectively, seek certain confirmations regarding the application of CTs and CETs to P&DCs and to intermediate facilities, along with related lists. The Service’s withdrawal of its objection to most of the referenced subparts leaves in issue only the portion of the (b) subparts which seek lists of CTs and CETs for each intermediate facility. The Service’s position is that this information is neither relevant nor necessary to the resolution of issues in this complaint. Postal Service Objections (First Set) at 3. Popkin, however, claims that the CTs and CETs relate to the current service standards and that the information is necessary and relevant to an evaluation of the extent to which the standards meet the

requirements of the Act. First Popkin Motion at 3-4; *see also* Second Popkin Motion at 1. In its Opposition, the Service expands on its initial objection, and asserts that providing the requested lists “gets one no closer” to resolving the issues under consideration here. Second Postal Service Opposition at 1. *Ruling:* the Motion is not granted. Among other things, I find it persuasive that the service standards were established without regard to the CETs at intermediate facilities, and that the lists appear to bear little relevance to the central issues of this case.

DBP/USPS-7(a) and (b). These questions ask whether CTs and CETs can be different (at a given facility) for mail destined to different subfacilities and, if the answer is yes, for a list of the times. The Service withdrew its initial objection, but its answer — “No” — is expressed only in relation to CETs. *See Revised Responses of the United States Postal Service to Interrogatories of David Popkin.* Popkin correctly notes that CTs were not mentioned in the answer. Second Popkin Motion at 1. At this point, the Service says it intends to file a further revised response to subpart (a) with references to the CTs, which it says were inadvertently omitted from the earlier response. It still maintains, for reasons cited earlier, that the list of CTs for “each of several hundred facilities” is irrelevant. Second Postal Service Opposition at 2. *Ruling:* the Motion is deemed moot with respect to subpart (a), given the Service’s representations regarding its intention to file a further response; the Motion is not granted with respect to subpart (b), given the requested minimal relevance of the requested lists.

DBP/USPS-8(a) and (d). Subpart (a) asks whether the CT was chosen as the starting time of the 12-hour time frame and, if not, for certain additional information; subpart (d) seeks copies of memoranda or electronic messages related to the 12-hour drive time standard. The Service has now filed an answer to subpart (a) stating that the CT was not chosen as the starting time. *Revised Responses* at 5-6. Also, in response to subpart (d), the Service has stated that the search for responsive documents has been completed, and that no documents have been found. *Ruling:* the Motion is deemed moot.

DBP/USPS-9(a), (d) and (e). In response to a request for certain definitions of “consistency” and “the 2-day service standard,” the Service refers Mr. Popkin to

testimony in Docket No. N89-1 and to page 7 of its July 30th Motion to Dismiss; therefore, the Service claims the Motion is not justified. Popkin indicates that he prefers "specific and direct answers." First Popkin Motion at 4. Also, with respect to the current definition, Mr. Popkin notes that the Service has stated that "Nothing has changed to warrant a materially different 'definition.'" He claims this answer is not responsive, asserts that "Apparently, there are immaterial changes that now exist," and asks what they are. *Ibid.* *Ruling:* the Motion is granted in part. To the extent the Service can provide a succinct definition of "consistency," it is directed to do so. "Immaterial changes," in line with standard discovery practice, need not be discussed. It appears, with respect to "the 2-day standard," that the meaning can be readily determined from the referenced documents.

DBP/USPS-10(d1), (d2) and (e1). The Service initially objected to these questions, which concern the computer model and related "PC Miler" software, but has since provided the confirmation requested in subpart (d1). It further indicates that the information requested in the other subparts will be answered as part of the response to DBP/USPS-55. *Ruling:* given the Service's representations, the Motion is deemed moot.

DBP/USPS-11(b). This interrogatory also addresses matters related to the "PC Miler" software used in the computer model. The Service indicates that its original answer was out of sequence, and says it has corrected this error in a revised response. First Postal Service Opposition at 9. The Service maintains that the requested confirmation has therefore been provided. *Ruling:* the Motion is deemed moot.

DBP/USPS-12(a) and (b). Subpart (a) asks for a list of postal facilities that normally consolidate mail by shipping it to another facility for processing; subpart (b) asks for a list of facilities that normally process outgoing mail on Sunday. Popkin's claim of relevance is based on his position that consolidation may advance the CTs at originating facilities, and that Sunday processing will be determinative regarding "Day 0" processing. First Popkin Motion at 5. The Service, however, maintains its objection that these questions seek irrelevant information, and emphasizes that the service standard definitions and the point-to-point service standards at issue were determined

without regard to the considerations Mr. Popkin poses. Therefore, it says it is incorrect for Popkin to argue that the extent to which mail facilities consolidate their processing is relevant to fully evaluate the current service standards. First Postal Service Opposition at 10. *Ruling:* the Motion is not granted. Again, I find it persuasive that the service standard definitions and point-to-point standards apparently were developed without regard to the matters sought in this interrogatory.

DBP/USPS-14(a) and (b). The Service objects that these questions, which ask whether the Service has External First-Class (EXFC) or Origin-Destination Information System (ODIS) data for First-Class Mail by type of mail piece, lack relevance to any issue in this case. It notes that the service standards and related changes under consideration are uniform, irrespective of any differences in physical characteristics among pieces within the class of mail. Postal Service Objections (First Set) at 11. The Service says the complaint cannot be reasonably interpreted as raising issues related to differences in physical characteristics for First-Class Mail pieces subject to the service standard changes that were finalized in the past two years. It also says that to the extent "adequacy" of mail service is an issue, it is adequacy on a class-wide basis, as it relates to the changes in service standards. *Ibid.* *Ruling:* the Motion is granted in part. At this point, the Service is directed to answer whether the requested data exists. A decision whether access to the data, if it exists, should be granted is a question that can be addressed later, if necessary.

DBP/USPS-16(a). Assuming from the filings that only subpart (a) is still in issue, the dispute is whether a revised response, submitted to provide requested amplification, still misses the mark in terms of describing certain "minimum areas" served by a given P&DC. The Service contends that it has answered the question initially asked, and asserts that Mr. Popkin has now asked several questions about his own mail service. Second Postal Service Opposition at 2. *Ruling:* the Motion is not granted. Mr. Popkin asserts that the interrogatory, as originally filed, asks for a response in terms of "administrative" areas (as opposed to distances), but this distinction does not appear in the original wording. Moreover, it appears that the Service, having been advised of Mr. Popkin's intended focus, supplemented its original answer with a citation to a current

Service Standards map. This seems to provide a source for the requested administrative detail. Also, in response to questions posed in the First Motion (at page 6) regarding several specific areas, the Service has stated that the answer to each scenario is "No." Accordingly, no useful purpose would be served by requiring an additional response.

DBP/USPS-17(a) and (b). The Service initially objected to subpart (a) of this question, and said a response to subpart (b) would be forthcoming. The Service later withdrew its objection to subpart (a), and provided a response. Thus, only subpart (b) remains in issue. This interrogatory asks that the Service "please advise" those Origin-Destination ZIP Code pairs where air transportation is used to transport mail with 2-day delivery service, and to indicate whether surface transportation would have resulted in service of three or more days. In its Revised Response, the Service has responded:

Every First-Class Mail 2-day service standard is established with the expectation that surface transportation can be used to effect 2-day delivery. Air transportation is used instead for specific 2-day origin-destination pairs when it is more economical to do so and where adequate air service is available.

Popkin asserts that the Service still has not provided the listing that was requested and has not stated whether any 2-day service pairs would be 3-day if surface transportation were used. Second Popkin Motion at 2. In response, the Service states that air service is not used to advance the level of service provided to mail subject to a 2-day standard. It also requests another week to determine if it is feasible to isolate 2-day and 3-day data in any meaningful manner. Second Postal Service Opposition at 2-3. *Ruling:* the Motion is granted in part. The Service is directed to continue its effort, for the requested period of time, to determine the feasibility of isolating the requested data. If data or information can be produced, the Service is directed to provide it. If not, the Service should respond that the information is not available.

DBP/USPS-18. This interrogatory seeks information regarding reciprocal service standards between P&DCs for three scenarios (overnight, 2-day, and 3-day) in the Docket N89-1 and current environments. The Service has withdrawn its initial objection

to subpart (a) and has filed a response. It also has provided explicit confirmation of non-reciprocity to clarify its initial combined response to subpart (b) and (c). *Id.* at 12. However, Mr. Popkin claims the revised responses still fail to discuss the conditions that existed at the time of the Docket No. N89-1 and the differences, if any, between those conditions and current policy. In particular, Mr. Popkin says the interrogatory asks for the extent that reciprocity was considered or utilized, not whether it was a “mandatory policy,” as stated in the Service’s answer. Second Popkin Motion at 2. The Service reiterates its position that it is unable to locate pertinent records from 1990, and therefore cannot provided the requested description. Moreover, it asserts that this information is immaterial to the issues here, as they concern current service standards. Second Opposition at 3. *Ruling:* the Motion is not granted. The inclusion of the reference to a “mandatory policy” does introduce some uncertainty over whether a responsive answer has been provided. I think it is clear from the context that this is the case. I also accept the Service’s representation that no responsive material can be located.

DBP/USPS-19(a) and (b). These questions inquire, respectively, into the extent to which mail volume was considered in evaluating overnight and 2-day service areas under two scenarios (Docket No. N89-1 conditions and current policy). It also seeks an explanation and discussion of differences, if any. The Service withdrew its objection to subpart (a) and filed a response, and has supplemented its initial response to subpart (b) to provide greater clarity. Popkin contends, however, that the revised responses still fail to discuss the conditions that existed at time of Docket No. N89-1 and the differences, if any, between those conditions and current policy. Second Popkin Motion at 2. In opposing the Motion, the Service asserts that it is not clear what conditions it is expected to describe, and asserts that Mr. Popkin has provided no guidance. Second Postal Service Opposition at 4. *Ruling:* the Motion is denied. A review of the revised response indicates that the Service has stated that there are no remaining records related to the initial implementation indicating the extent to which volume was a consideration. I accept this response as a good faith representation; therefore, the requested discussion and comparison cannot be provided.

DBP/USPS-20. This interrogatory asks when Tours 1, 2 and 3 at a processing plant normally operate and for a discussion of assigned functions. The Service objects to providing a response on grounds that it seeks "detailed information about which mail processing operations are conducted on which tours, information which is neither relevant nor necessary to a resolution of the issues in this proceeding." Postal Service Objections (First Set) at 5. However, Popkin claims that the types of mail that are processed on each of the three tours is "necessary to evaluate the compliance of the existing service standards." First Popkin Motion at 8. He also claims it is relevant because "[s]ome mail has been defaulted to another tour that extends the service standard by a day." *Ibid.*

In response, the Service notes that processing plans vary from plant to plant. It also says that the service standards at issue and the resulting point-to-point service standards were not determined on the basis of the tours on which particular types of mail are typically processed at various plants. First Postal Service Opposition at 12. Moreover, the Service asserts that Mr. Popkin has articulated no argument to support the contention that he needs to know the types of mail that are processed on each of the tours to evaluate compliance with existing standards. *Id.* at 13. Finally, the Service also asserts that it does not know what Popkin means by saying some mail has been defaulted to another tour that extends the service standard by a day, and suggests this may refer to an isolated incident. *Ibid.* *Ruling:* the Motion is not granted. As the Service's responses make clear that processing varies from plant to plant and tour to tour and the information may have only minimal relevance, I will not require a further answer. However, it appears the Service has not addressed the portion of the question asking about the timeframes for each tour. To avoid further delay and in the interest of providing general background information, I will take notice, for the record, that Publication 32 (May 1997, updated through November 4, 1999) defines the term "tour" as follows: One of three scheduled USPS shifts: Tour I (usually from 11 p.m. to 7 a.m.) is the night shift, Tour II is the daytime shift (usually from 7 a.m. to 3 p.m.) and Tour III is the evening shift (usually from 3 p.m. to 11 p.m.). If this definition is substantially

correct, no further response from the Service is needed. If it is not correct, the Service is asked to provide clarification.

DBP/USPS-21(a) and (b). In (a), Mr. Popkin asks, under both Docket No. N89-1 conditions and current policy, "To what extent should the existence of adjacent with contiguous borders 3-digit ZIP Code areas exist with a 3-day service standard between them." Subpart (b) asks about the extent to which local postal facilities circumvent the normal processing plan. To subpart (a), the Service has responded: "To an extent reasonable under the circumstances." To subpart (b), it has said it has no measure of the extent to which such activity occurs. Postal Service Responses at 36.

Mr. Popkin asserts that the response to subpart (a) did not provide the conditions that existed at the time of Docket No. N89-1, and asks for "the criteria that would be utilized to determine the "extent reasonable under the circumstances." With respect to (b), Popkin insists that the Service does know the extent to which this type of processing exists, and notes that the Service did not object on the grounds of burden. He further asserts that he needs the data to evaluate the extent to which "next-door neighbors" who have 3-day service shown "on paper" actually have overnight service. Popkin First Motion to Compel at 8. *Ruling:* the Motion is granted in part with respect to subpart (a). If the Service can provide some succinct additional detail regarding what criteria might be deemed "reasonable under the circumstances," it is directed to do so. The Motion is granted in part with respect to subpart (b). To avoid further delay or unnecessary motion practice, the Service is directed to provide the stipulation (referred to in its Opposition) relating to the possibility that some departure from routine processing may occur from to time. First Opposition at 14.

DBP/USPS-22. At issue is a dispute over the wording and intent of this question which, as originally filed, asked: "To what extent (under Docket No. N89-1 conditions and under current policy) is it desired to have all mail destined to locations within the same state as either overnight or 2-day service standards?" The Service contends that it has answered the question as asked, but Popkin maintains that this is not the case, given his position that the question is really: "To what extent, if any, arrangements would be made to ensure that in-state mail would be overnight or 2-day service?" First

Popkin Motion at 8. *Ruling:* the Motion is denied. The Service has answered the question that was asked; the later formulation is an entirely different question, and I will not require a new answer at this point.

DBP/USPS-23. This interrogatory seeks a copy of the service standards as of Docket No. N89-1 and copies of any subsequent versions, along with an explanation of the type and extent of changes. The Service has answered that no copies of earlier data sets exist, given a practice of “over-writing” this material. It also questions the relevance of the inquiry, but nevertheless says it has initiated a search to determine whether a complete set can be compiled and promises that upon completion, responsive documents will be filed as a library reference. The Service also points out that Mr. Popkin informally requested – and received – an Excel Workbook via email in June 2001. *Id.* at 16. *Ruling:* the Motion is granted in part, to the extent the Service determines that responsive documents exist. Apart from the production of this material, no further response will be required.

DBP/USPS-24 (b-e). These questions were included in the First Popkin Motion because answers promised in the Service's initial set of responses (submitted on October 4th) were not timely filed. The Service attributes the delay to the fact that key personnel were occupied with matters related to the September 11th attacks and to the distribution of anthrax through the mail. On October 22, 2001, the Service filed a single answer – covering subparts (b)-(d) – stating that no transportation data of the type sought exist. With respect to subpart (e), the Service said it would file responsive materials (on the reliability of commercial air transportation) as USPS-LR-C2001-3/2. *Ruling:* the Motion is deemed moot, on the basis of the response provided and the promise to file the referenced library reference.

DBP/USPS-25(a) and (b). At issue in subpart (a) is whether the Service should be required to provide an unredacted copy of the slide presentation which is now on file, as DFC-LR-1, in a redacted version. At issue in (b) is whether a timely response to a request for production of other related memoranda or directives has been provided. First Popkin Motion at 8-9. The Service objects to disclosure of the redacted material requested in subpart (a) because it says that, with the exception of the last page, it

contains information that is not relevant to the service standard changes at issue in this proceeding. In support of this position, it says the first redacted page is a list of Headquarters and Field employees who served on the Process Review Team. It says the next three pages contain material pertinent to a proposal for adjustments to particular overnight service standards at the same time that Phase 2 of the realignment plan was being finalized in 2000-01. The Service regards this material as part of the pre-decisional deliberative process on a matter (overnight changes) that was shelved, and which is not within the scope of this proceeding. The Service says the next seven redacted pages (which follow the page captioned "Arrival Profile Table") provide examples of the arrival profiles for First-Class Mail traveling between specific mail processing facilities, if complete Buffer Times were utilized. It explains that they represent only hypothetical arrival patterns of the concept outlined in other portions of DFC-LR-1, and do not represent past, current or proposed arrival profiles for the specific facilities. Moreover, the Service emphasizes that the specific arrival and departure times of mail between specific plants were not a factor in the finalization of the service standard changes at issue in this proceeding. Regarding the final redaction, the Service says these were preliminary estimates that were eventually superceded by more mature estimates in DFC-LR-1, and the latter already have been provided. First Postal Service Opposition at 16-18. *Ruling:* the Motion is not granted. The discussion the Service has provided regarding the redacted material leads to the conclusion that the copy now on file satisfies participants' interests in access to relevant material.

DBP/USPS-26(a)-(f). This series of questions asks for the percentage of the mail profile prior to the recent realignments that shifted from one service standard to another, under six scenarios. The Service's initial answer stated: "Other than files generated during the course of the litigation of Docket No. N89-1, the Postal Service has been unable to locate responsive records from the early 1990's related to the implementation of Phases 1 and 2 of the realignment plan." A revised answer, provided in response to the First Motion to Compel, states: "Other than files generated during the course of the litigation of Docket No. N89-1 which may contain some general projections about what might happen, the Postal Service has not been able to locate any records generated

after that proceeding that may have measured the actual shifts that resulted from implementation of the Phases 1 and 2 of the realignment plan that occurred in the early 1990s.

The Service maintains that its revised response to subparts (a) through (f) of this question remove any possible ambiguity in its earlier answer. With respect to subpart (g), the Service says it has provided citations to multiple sources of responsive information, including a summary of the purposes of the N89-1 realignment plan. First Postal Service Opposition at 18. It also offers to cooperate in arranging a mutually convenient date for Mr. Popkin to examine its Docket No. N89-1 files, thereby allowing him to determine for himself the extent to which any of the requested projections were made in that case. Second Opposition at 4. *Ruling*: the Motion is granted in part, as I find that the reference to “files” and “general projections” introduces some ambiguity, notwithstanding the Service’s assertion to the contrary. The Service is asked to rephrase its answer to respond to the question as directly as possible. As the “general projections” may be of interest to Mr. Popkin, these should be produced if doing so would not be unduly burdensome.

DBP/USPS-27(f), (g), (h) and (i). From the current state of the pleadings, it appears that a response to subpart (f) — which sought information on air transportation utilization — is no longer in issue, given the Service’s indication that responsive material, to the extent available, will be filed as a library reference as soon as possible. See First Postal Service Opposition at 18-19. However, the Service maintains its objection to subpart (g), which seeks copies of any Headquarters-level press releases, directives, or other memoranda regarding the level of service for First-Class Mail when Air Mail was eliminated twenty years ago. It asserts that there is no plausible nexus between elimination of Air Mail service in May 1977 and the service standard changes at issue here. *Id.* at 19. The Service further claims that Mr. Popkin’s argument that First-Class Mail has been shifted from air to ground transportation, and that a delivery day has been added, is a “gross mischaracterization of fact.” *Ibid.* Subpart (h) asks whether the level of air transportation utilization matches the stated level at the time of the elimination of Air Mail as a separate service, while (i) seeks an explanation if it does

not. The Service has answered that the levels are probably not the same, but acknowledges that there are no records available that would permit a very precise comparison. Given this answer, the Service deems subpart (i) not applicable, and maintains it should not be required to attempt to fashion an explanation, in light of its response to subpart h. *Ruling:* as to subpart (f), the Motion is deemed moot. As to subpart (g), the Motion is not granted. I agree that there is no reasonable nexus between the elimination of a separate Air-Mail service and the matters at issue here; therefore, no further search or response will be required. As to (h) and (i), the Motion is not granted. The answer apparently is as responsive as it can be under the circumstances, given the passage of about twenty years. Speculation about these matters would not advance the record.

DBP/USPS-28 (a)–(e). This series seeks information on policies and procedures related to postmarking and processing. The Service initially objected to these questions, but later withdrew its objection and filed responses on October 22, 2001. See First Postal Service Opposition at 19. *Ruling:* the Motion is deemed moot.

DBP/USPS-30. In response to a request for various reports on First-Class Mail service standards, the Service initially responded that any reports, if identified, would be examined for the purposes of making expeditious disclosure determinations. The Service later acknowledged that certain Office of Inspector General (OIG) audit reports had been identified as potentially responsive to this request, but said they apparently had not been transmitted from OIG to the Service. It also notes that, as indicated earlier, it intends to examine the reports and make expeditious disclosure determinations. The Service says it is unaware of any General Accounting Office reports. First Postal Service Opposition at 20. *Ruling:* the Motion is deemed moot, on the understanding that responsive reports (or portions thereof), if found, will be produced.

DBP/USPS-39. For the purpose of comparing “the reliability of the computer program in determining the travel time between two facilities,” this interrogatory asks for two years’ worth of records showing the actual time utilized for various trips “by the organizations that transport mail between facilities [at or above the P&DC level] as

compared to the calculated value.” The Service objects on grounds of burden, overbreadth and lack of relevance. It notes that compiling, organizing and analyzing thousands of log entries is “incalculably overwhelming.” Postal Service Objections (Second Set) at 1. It also asserts that this case does not turn on arguments about the PC Miler’s reliability as a tool for designing the transportation network and mail processing operations, or on whether the use of the PC Miler resulted in violations of 39 U.S.C. §§ 3661 or 3662. Thus, the Service says it should not be burdened with providing an answer that entails reviewing “hundreds of thousands” of trip reports. *Id.* at 1-2.

In response, Mr. Popkin notes that the Service did not contact him regarding possible ways to alleviate the claimed burden associated with providing a response, and further claims that his request is relevant because the distinction between 2-day and 3-day service standards “pretty much hinges on the travel time calculated by the computer.” Second Popkin Motion at 2. *Ruling:* the Motion is granted in part. I will not require the Service to produce numerous log entries, but if it can provide some additional description or limited documentation regarding the accuracy of the travel times estimated by the PC Miler software not otherwise provided on this record, it is directed to do so.

*DBP/USPS-49.*⁴ Referencing a recent issue of *Memo to Mailers* regarding the shared air transportation network with FedEx, subpart (a) asks about the effect on existing service standards; subpart (b) asks which standards will be affected; subpart (c) asks for a list of cities where First-Class Mail is now carried on this system; and subpart (d) asks for a description of expected improvements in reliability and consistency of service. The Service objects on grounds of lack of relevance, asserting that the complaint relates to service standard determinations made prior to implementation of the FedEx contract. Postal Service Objections (October 22, 2001) at 2. Mr. Popkin, however, claims that the Service’s plans for closing or consolidating facilities are relevant to determinations related to matters such as adequacy of First-Class Mail

⁴ This interrogatory was misidentified as Interrogatory 50; this error was corrected by a later Popkin Notice.

service and nondiscrimination. *Ruling:* the Motion is not granted. While it may be of general interest to have an indication of the Service's future mail transportation patterns, in the absence of any indication that such changed patterns may lead to adjusted service standards, I find that the issues in this case can be addressed adequately without disclosure of this type of material.

DBP/USPS-50. Referencing an article about proposed facility closings, subpart (a) asks for a list of processing facilities scheduled to be closed and related information; subpart (b) seeks a discussion of plans for any other consolidations or closings of processing facilities. In both its initial objection and its opposition, the Service asserts that these questions, which relate to potential future closings, seek information that have no bearing on two of the central issues in this case, and therefore contends responses should not be required. Postal Service Objections (Second Set) at 2; Second Postal Service Opposition at 5-6. Mr. Popkin's argument with respect to question 49 is also applicable to this question. *Ruling:* the Motion is not granted, as this information is not essential to the determinations needed to be made in this case.

Note. If compliance with this ruling requires an extension to established deadlines, a reasonable period is granted.

RULING

1. The Motion to Compel Response to Interrogatories [Both Those That Have Been Objected To As Well As Those That Have Not Been Fully Responded To], Comments on POR C2002-3/1, and Potential Motion for Late Acceptance, October 15, 2001 (also referred to as the First Popkin Motion) is disposed of as indicated in the body of this ruling.
2. The Motion to Compel Response to Interrogatories [Both Those That Have Been Objected To As Well As Those That Have Not Been Fully Responded To], October 29, 2001 (also referred to as the Second Popkin Motion) is disposed of as indicated in the body of this ruling.


Ruth Y. Goldway
Presiding Officer