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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. C2001-3/7

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 POSTAL SERVICE AND POPKIN MOTIONS
RELATED TO DBP/USPS-24(e), 27(f) and 30

(Issued November 29, 2001)

Introduction. This ruling addresses a Postal Service motion for late acceptance of answers to interrogatories DBP/USPS-24(e), 27(f) and 30 and David B. Popkin's objection thereto. It also addresses, with respect to question 30, Mr. Popkin's motion for production of a library reference from a previous docket (including related relief in terms of potential follow-up) and the Service's reply to that motion.¹

The three interrogatories in issue are part of a larger set of questions Mr. Popkin filed on September 20, 2001. Question 24(e) asks for five years' worth of data and information on commercial air transportation reliability. Question 27(f) seeks certain material regarding specification of air transportation service. Question 30 asks for copies of Inspection Service, Inspector General, and General Accounting Office reports related to First-Class Mail service standards.

On October 4, 2001, the Postal Service filed a set of responses that included, for questions 24(e), 27(f) and 30, statements that effectively amounted to progress reports, rather than full-fledged answers. In response to question 24(e), for example, the Service said, without further elaboration, that a response was forthcoming; for both 27(f)

¹ The filings referred to in the introductory paragraph include: Motion of the United States Postal Service for Late Acceptance of Responses to Interrogatories of David Popkin, November 9, 2001 (Postal Service Motion for Late Acceptance); Objection to the Motion of the United States Postal Service for Late Acceptance of Responses to Interrogatories of David Popkin and Motion to Provide Me with a Copy of a Library Reference, November 19, 2001 (Popkin Objection and Motion for Production); Reply of the United States Postal Service to Objection of Mr. Popkin to Motion for Late Acceptance and Motion for Provision of Second Copy of Library Reference, November 26, 2001 (Postal Service Reply).

and 30, it indicated search efforts were underway and that further action would be taken as responsive materials were identified. On November 9, 2001, the Service filed full responses, including recently-compiled library references. This material apparently was also mailed to Mr. Popkin. However, with respect to one set of audit reports, the Service simply referred Mr. Popkin to USPS-LR-I-380 from Docket No. R2000-1.

Ruling. The Service's motion for late acceptance is granted. The Popkin motion for production is deemed moot, as the library reference in issue (USPS-LR-I-380), filed in Docket No. R2000-1 is now available on the Commission's website. Mr. Popkin is granted one week from the issuance of this ruling to file necessary and appropriate follow-up interrogatories.

Discussion. On November 9, 2001, the Postal Service moved for late acceptance of its responses to DBP/USPS-24(e), 27(f) and 30. In acknowledging the 36-day delay, it noted that the first two questions required consultation with Headquarters personnel who are working on matters related to the September 11, 2001 terrorist attacks and the more recent anthrax contamination. The Service said these efforts have allowed the workers to provide only limited assistance in this docket. Postal Service Motion for Late Acceptance at 1. The Service also noted that assigned counsel is involved in the pending omnibus rate case litigation of Docket No. R2001-1. With respect to question 30, the Service said it took several requests to the Office of the Inspector General before "arguably responsive material" was obtained by the Law Department. *Id.* at 2. Overall, however, the Service concluded that the delay did not prejudice any party, and stated there was still time for follow-up discovery. *Ibid.*

Mr. Popkin's opposition takes issue with two points. One is the Service's assertion that the delay has not prejudiced any party; the other is that the Service has not provided him with a physical copy of USPS-I-380. Mr. Popkin also indicates that, as of the date of his motion, he had not received the three library references the Service has mailed to him. Popkin Objection and Motion for Production at 1-2. Given these circumstances, Mr. Popkin asks that the Service be required to furnish him with a copy

of the Docket No. R2000-1 library reference. He also asks for a two-week period, following receipt of all library references, to file follow-up interrogatories. *Id.* at 3.

In response, the Service reiterates its regret for the delay, and indicates it will not object to legitimate follow-up. Postal Service Reply at 1-2. It also offers an interpretation of Commission Rule 31(b)(2)(ii)(A) that absolves it of responsibility for providing Mr. Popkin with the requested library reference. In brief, the Service's reasoning is that it has not utilized the material for purposes of this docket and, in any event, it provided the document in question to Mr. Popkin in a timely fashion in Docket No. R2000-1. *Id.* at 2-3.

As Mr. Popkin's motion makes clear, he does not dispute the fact that recent events have complicated preparation of timely responses; instead, his primary concern is that the Service has too lightly dismissed the potential for resulting prejudice. This concern is understandable; however, the circumstances the Service is now facing are extraordinary, and the possibility of prejudice can be addressed by allowing leeway on the deadline for legitimate follow-up interrogatories.

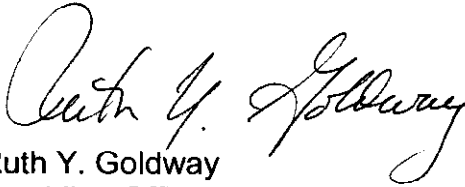
USPS-LR-I-380. As part of a large-scale effort independent of this docket, the Commission plans to electronically scan library references from current and previous cases. It is my understanding that USPS-I-380 is one of the library references that has been scanned, and therefore is now available on the Commission's website. Thus, Mr. Popkin should be able to access this document, without further delay or interaction with the Postal Service.² Accordingly, the request for production is moot. In reaching this conclusion, I make no substantive finding on the appropriateness of the Service's interpretation of the Commission's library reference rule. In addition, USPS-LR-I-380 is a redacted version of various audit reports provided in response to DBP/USPS-130 in Docket No. R2000-1. The appropriateness of the redactions is deemed a closed matter.

² To access the document, go to www.prc.gov. Click on the "Search" button and then, in the appropriate field, enter "Docket No. R2000-1," the document type (library references), and further identifiers (such as "380"). If any participant needs assistance in accessing this library reference electronically, he or she should contact the Commission's Docket Section at 202-789-6846.

Mr. Popkin is allowed one week from the issuance of this ruling to file necessary and appropriate follow-up interrogatories on all four library references.

RULING

1. The Motion of the United States Postal Service for Late Acceptance of Responses to Interrogatories of David Popkin, filed November 9, 2001, is granted.
2. The Motion to Provide Me with a Copy of a Library Reference, filed November 19, 2001 by David B. Popkin, is deemed moot.
3. Mr. Popkin is granted one week from the issuance of this ruling to file follow-up interrogatories, as described in the body of this ruling.


Ruth Y. Goldway
Presiding Officer