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PRESIDING OFFICER'S
RULING NO. C2001-3/6

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

(Issued November 29, 2001)

This ruling addresses matters raised in the Objections of the United States Postal Service to Interrogatories of David Popkin, November 1, 2001 (Postal Service Objections); two related motions to compel responses (or further responses); and the Opposition of the United States Postal Service to David Popkin Motion to Compel Responses to Interrogatories, November 13, 2001 (Postal Service Opposition).¹

The body of this ruling is divided into three parts. Part I deals with the following interrogatories (cited in the November 5, 2001 Popkin Motion) for which more responsive answers are sought: DBP/USPS-44, 45, and 51 through 53. Part II addresses interrogatories where no initial answer has been provided, given the Service's objections: DBP/USPS-58, 66(b), 67 and 68. Part III deals with DBP/USPS-38, 43 and 47, which were the subject of both the November 5, 2001 Popkin Motion (in terms of a request for prompt filing of answers) and the subsequent November 21, 2001 Popkin Motion (seeking more responsive answers).²

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], November 5, 2001 (November 5, 2001 Popkin Motion) and Motion to Compel Response to Interrogatories That Have Not Been Fully Responded To, November 21, 2001 (November 21 Popkin Motion).

² Two other interrogatories (DBP/USPS-56(j) and DBP/USPS-79) are also included in the November 21, 2001 Popkin Motion. These are not addressed or ruled on here.

Part I. November 5, 2001 Popkin Motion (Seeking More Responsive Answers)

DBP/USPS-44. In this interrogatory, posed as a follow-up to DBP/USPS-26(I) and (m), Mr. Popkin asks for the specific details why the Postal Service feels that it is “not important” to obtain public input regarding service standards. The Service’s answer is that no form of the word “important” appears in the referenced interrogatory, and it therefore is unable to respond. (In interrogatory 26, Popkin had asked whether the Service makes a specific request to the mailing public at regular intervals to inquire about potential changes in delivery standards. The Service answered that it does not make the type of request Popkin referred to, and stated that doing so has not been deemed necessary.)

Mr. Popkin moves for a more responsive answer on grounds that the Service’s answer is inappropriate. He maintains that the interrogatory was filed before the end of the discovery period, so although it may be worded in the form of a follow-up interrogatory, it does not have to meet the requirements of a “true” follow-up question. Regarding his use of the term “important,” Mr. Popkin asserts that if the Service decides against doing something, it obviously does not feel it is important. Motion to Compel at 4. Finally, he asserts that public input is necessary for changes in service, and says that he is attempting to learn the reasons why the Postal Service did not deem it necessary to make a specific request to the public. *Ibid.*

The Service maintains there is nothing in its response to the underlying interrogatory (DBP/USPS-26) that implies the Service feels it is not important to obtain public input regarding service standard changes. Postal Service Opposition at 1. Instead, it says it answered a question about why certain procedures for soliciting public input were not in place, and notes that the “importance” of such procedures was not implicit in either the referenced interrogatory or the answer. The Service also emphasizes that its response never indicated it was not important to have substantive input, only that it was not necessary to go about obtaining it in the manner Mr. Popkin

has suggested. *Id.* at 2. The Service states that it therefore considers it inappropriate for Mr. Popkin to expect any answer other than the one he has received. *Ibid.*

Ruling. The November 5, 2001 Popkin Motion is granted in part with respect to DBP/USPS-44. The Service is correct that the term “important” was not used or implied in underlying interrogatory DBP/USPS-26(l) and (m); therefore, no response will be compelled to this aspect of the question. However, the Service has stated that it has never indicated that it was not important to have substantive input, only that it was not necessary to go about obtaining it in the manner suggested by Mr. Popkin. It also has said that Mr. Popkin regards the presence of certain formal procedures as determinative on the question of whether the Postal Service considers public input “important,” but claims there is a clear distinction between the importance of such input and the manner by which it can be obtained. Postal Service Opposition at 2, fn. 2 and fn. 3.

Mr. Popkin’s formulation of the question has not been precise, but his interest is clearly directed at when and how the Service obtains (or has obtained) public input on service standard changes. This is an appropriate line of inquiry. The Service is directed to provide a response indicating when and how it has obtained substantive public input in connection with changes in First-Class Mail service standards.

DBP/USPS-45. In DPB/USPS-27(b) and (c), Mr. Popkin sought confirmation that, in general, air transportation will provide more expeditious service than surface transportation or, in the absence of confirmation, a related explanation. The Service answered that the referenced statement is not uniformly correct and, as an explanation, cited distance as a factor. It then provided a detailed example based on a Pittsburgh P&DC-to-Buffalo trip. The Service also noted that the results would not hold true for a Pittsburgh-to-Los Angeles trip, but concluded that the Buffalo example “clearly demonstrates” that a 57-minute flight is not more expeditious than a 4-hour, 24 minute surface trip.

In DBP/USPS-45, Mr. Popkin modifies the earlier question by asking for confirmation that, in general, air transportation will provide more expeditious service

than surface transportation “for distances beyond the nearby area.” He also asks the Service to provide its definition of “beyond the nearby area” or for an explanation.

The Service's answer is that, as it indicated in its earlier response, the requested evaluation can only be made with a case-by-case analysis. It further notes that the question does not define what Mr. Popkin considers a “nearby area,” and says it has no such definition. Therefore, the Service says it finds it impossible to provide a generalized response to the question. Mr. Popkin claims this response is inappropriate. He asserts that he is asking the Service to define what it considers to be “nearby” enough as a distance to be the approximate breakpoint between surface and air transportation being more expeditious. He claims that the reduction of the use of air transportation makes this very relevant. November 5, 2001 Popkin Motion at 4.

In opposing the motion, the Service notes that its earlier response (DPB/USPS-27) indicated that notwithstanding the general presumption that air is more expeditious, it is not uniformly true that air transportation will provide more expeditious service than surface transportation. It then elaborates on why it believes a case-by-case review is the only way to come up with a basis for the requested generalization. Postal Service Opposition at 3-4.

Ruling. The November 5, 2001 Popkin Motion with respect to DBP/USPS-45 is not granted. Both the Service's answer and its Opposition clearly indicate that it does not confirm the statement set out in the follow-up interrogatory. The Service also has stated that it has no definition of “nearby area” that can be applied to this question. Given these representations, no further answer will be required.

DBP-USPS-51 through 53. These questions pertain to External First-Class (EXFC) results showing on-time delivery of 93.96 percent for overnight mail, 86.08 percent for 2-day mail, and 83.18 percent for 3-day mail. To subpart a of each question, which asks whether the results show reliable and consistent service, the Service has answered “yes.” Similarly, to each subpart b, which asks for the reasons for a “yes” response, the Service has answered that the numbers speak for themselves. To subpart c, concerning the percentage not delivered on time, the Service has answered

that it has not conducted any analysis permitting it to explain why the EXFC test pieces were late during FY 2001 Quarter 4 or the relative significance of these reasons.

Mr. Popkin seeks more responsive answers to subparts b and c. With respect to subpart b, he maintains there must be reasons why the Postal Service feels that the level of service represents reliable and consistent service, and he therefore seeks specific reasons. November 1, 2001 Motion to Compel at 5. With respect to subpart c, Popkin says he is really asking two questions: the reasons why some of the mail does not arrive on time and the relative significance of each reason. He asserts that the Service has not provided any reasons why the mail does not arrive on time, and has not declared the relative significance of each reason. Popkin claims he needs the information to evaluate the effectiveness of the delivery standards, and asserts that if the delivery standards are not met on a reliable basis, the standards are meaningless. *Ibid.*

The Service maintains that its answers to subpart b reflect its conclusion that the referenced percentages provide the reasons for the conclusions in subpart a; accordingly, it says it has answered subpart b. Postal Service Opposition at 5. With respect to subpart c, the Service reiterates that no analysis has been performed and essentially asserts that the information sought (even if it were available) lacks relevance.

Ruling. The November 5, 2001 Popkin Motion is granted in part as to both subpart b and subpart c of DBP/USPS-51 through 53. As the EXFC results indicate, one score is in the low-80s, one is in the mid-80s, and the third is in the low-90s. While the Service may be justified in finding these results (both individually and collectively) well within the "reliable and consistent" service range, I disagree that these numbers speak for themselves, especially to the mailing public. It would be useful if the Service would attempt to provide, for subpart b, some narrative explanation supporting its conclusion that these percentages constitute reliable and consistent service. With respect to subpart c, the answer addresses the relative significance in detail; however, Mr. Popkin also asked that the reasons for lateness be identified. The Service's

Opposition identifies some of these reasons (such as carrier missorts, machine missorts, and failure to sweep collection boxes on time). To the extent other reasons are readily discernible, the Service is directed to provide them.

Part II. Motion Regarding Interrogatories to which the Service has Objected

DBP/USPS 58. This three-part interrogatory asks for examples of the documentation that would support a request to change overnight offices to a 2-day standard; for examples of documentation that would *not* support a request for changes; and for a discussion of the costs entailed in related evaluations. The Service objects on grounds that the question lacks relevance. It emphasizes that changes between 2-day and 3-day service are at issue in this complaint, not overnight/2-day changes. Postal Service Objections at 1. It also asserts that the decision-making process used for local requests for isolated changes was not employed in finalizing Phase 2; that Phase 2 did not involve any changes to overnight commitments; and that asking about the cost effect “strays even farther afield” of the issues in this proceeding. *Id.* at 1-2.

Popkin contends that the Service’s objection evidences its attempt to limit the scope of this complaint to whether the finalization of changes between 2- and 3-day service of the service standard realignment plan reviewed in Docket No. N89 comports with 39 U.S.C. §§ 3661 and 3662. Among other things, he contends that overnight service can be looked at as the “default” where the standards are not 2- or 3-day. November 5, 2001 Popkin Motion to Compel at 1-2.

In opposing the motion to compel, the Service claims lack of relevance. It asserts that the focus here is on “a systemic change” between 2-day and 3-day service, and has nothing to do with what it might take for a local postal manager to formulate a request, successful or otherwise, for a change between overnight and 2-day standards. Postal Service Opposition at 6.

Ruling. The November 5, 2001 Popkin Motion concerning DBP/USPS-58 is not granted. As the Service points out, the finalization of the Phase 2 realignment plan did not involve any changes to overnight commitments.

DBP/USPS 66(b). This interrogatory asks whether the Service has any plans to increase the service standards beyond the existing 1-, 2-, or 3-days and, if so, to provide complete details.³ The Service objects on grounds of lack of relevance, as it inquires into future plans affecting service standards. Postal Service Objections at 2. Mr. Popkin moves for a compelled answer on grounds that the extent to which the Postal Service is planning to actually utilize four-day delivery is relevant to evaluating the present service standards. November 5, 2001 Popkin Motion at 2-3. The Service opposes the motion on the same grounds – lack of relevance – cited in its objection. Postal Service Opposition at 7.

Ruling. The November 5, 2001 Popkin Motion concerning DBP/USPS-66(b) is not granted. In addition to the issue of relevance, it is assumed that should the Service decide to pursue service standards of the type referred to by Mr. Popkin, it would seek an advisory opinion from the Commission.

DBP/USPS 67. This interrogatory asks for details (including specific ZIP Code pairs) regarding a reference to “fixing the Priority Mail slower than FCM problem.” It also asks whether the referenced problem has been fixed and, if not, when it will be fixed. The Service objects that this question is irrelevant to the issue of whether the First-Class Mail service standard changes implemented in 2000 and 2001 comport with §§ 3661 and 3662 of the Postal Reorganization Act. *Id.* at 2. Popkin, on the other hand, contends that the extent to which “fixing the problem” will affect First-Class Mail service standards is relevant and should be investigated. Popkin Motion to Compel at 3.

The Service’s Opposition provides a rather extensive explanation of how the document Mr. Popkin refers to came to be included in a library reference it filed in this

³ Subpart a, to which the Service has not objected, asks for an explanation of why four day modeling is utilized.

case. In the course of this explanation, the Service notes that it considered the remark regarding Priority Mail irrelevant, but decided not to redact it out of concern that this might trigger concerns that relevant information was being withheld. It also emphasizes that the service standards at issue here relate exclusively to First-Class Mail, and that no Priority Mail (or other subclass standards) are involved. Postal Service Opposition at 7-8.

Ruling. The November 5, 2001 Popkin Motion concerning DBP/USPS-67 is not granted. The limited reference to First-Class Mail is not sufficient to support this line of inquiry, which is premised on Priority Mail. The claim that the information lacks relevance has merit; therefore, no further response will be required.

DBP/USPS 68. This interrogatory asks whether any actions taken by the Postal Service and any air transportation changes resulting from the recent anthrax mailings will affect the existing 1-, 2-, and 3-day service standards at issue in this docket. If the answer is yes, the interrogatory asks for complete details. The Service objects on grounds that the question seeks information that lacks relevance to the issues raised in this case. Postal Service Objection at 2-3. Popkin moves for a compelled response, on grounds that the Service has answered only with respect to anthrax, and not to air transportation changes. He further states that an answer to both parts is relevant, given his position that the complaint relates to determining whether the present service standards meet the criteria of the Act. He says the extent to which these two events either have or will shortly affect the service standards is completely relevant and must be fully investigated. November 5, 2001 Popkin Motion to Compel at 3.

In opposing the motion, the Service asserts that this interrogatory seeks information about topics that are "compelling, but completely irrelevant" to the legal issues in this complaint. It then elaborates on several considerations, and concludes the motion should be denied. Postal Service Opposition at 9.

Ruling. The November 5, 2001 Popkin Motion concerning DBP/USPS-68 is not granted. As this question addresses the impact of post-September 11, 2001 events on the service standards at issue here, P.O. Ruling No. C2001-3/4 is controlling. Mr.

Popkin expresses a concern that the Service addressed only anthrax and not air transportation, which was mentioned in the interrogatory. The referenced ruling specifically addresses air transportation changes after September 11, 2001.

Part III. Additional Matters Related to Interrogatories DBP/USPS-38, 43 and 47

Mr. Popkin has raised two issues concerning questions 38, 43 and 47. One is the Service's cursory statement that answers to these interrogatories would be forthcoming. Mr. Popkin indicates this approach, which entails no elaboration, prejudices him because it forces a further delay, potentially requires a separate pleading, and hinders follow-up to the response to DBP/USPS-48. November 5, 2001 Popkin Motion at 3-4.⁴ The other concern is that the answers the Service eventually provided (accompanied by a motion for late acceptance) are not responsive.⁵ November 21, 2001 Popkin Motion to Compel.

With respect to DBP/USPS-38, Mr. Popkin claims that subpart (a)'s requested confirmation has not been provided regarding whether certain contracts include a minimum vehicle speed. With respect to DBP/USPS-43, Mr. Popkin takes issue with the Service's response that it has been unable to locate records which would confirm Docket N89-1-era policy or practice regarding quarterly public solicitations concerning service standards. In DBP/USPS-47, Mr. Popkin repeats a request for a list of pairs where there is currently either a 2-day service standard that could be converted to an overnight standard if air is used instead of surface, or a 3-day standard that could be converted to overnight or 2-day standards. He effectively dismisses the explanation the Service has provided in lieu of the list, and asserts that elimination of air transportation in favor of surface transportation is the very thrust of this docket and that information "as

⁴ Mr. Popkin cites the Response of the United States Postal Service to Interrogatories of David Popkin (DBP/USPS-31 through 37, 41, 42, 44 through 46, 48, and 51 through 55), October 29, 2001 (Postal Service Response). In Postal Service Opposition at 10, the Service stated that answers would be filed the same day as the Opposition (November 13, 2001) or the next day.

⁵ Motion of the United States Postal Service for Late Acceptance of Responses to Interrogatories of David Popkin, November 13 (Postal Service Motion for Late Acceptance).

to the extent of the switch is needed for a full evaluation.” November 21, 2001 Motion to Compel at 2.

Rulings. The Postal Service Motion for Late Acceptance is granted. In doing so, I note that the Service has indicated that timely filing of answers to questions 38 and 47 required consultation with Logistics personnel who are working on post-September 11th matters. Assigned counsel is also actively involved in pending omnibus rate case matters. Postal Service Motion for Late Acceptance at 1. With respect to question 43, the Service said its response required a wide-ranging records search and that numerous leads were pursued in the hope that doing so would produce a more definitive answer. Under the circumstances, this explanation is accepted.

Ordinarily, a ruling on each of these interrogatories would await further action from the Service, such as voluntary submission of answers or an opposition to the motion to compel.⁶ However, under the circumstances here I am persuaded that Mr. Popkin's November 21, 2001 motion should be deemed moot with respect to interrogatories DBP/USPS-38, 43 and 47.

For DBP/USPS-38, the Service's answer would have been more clear if it had been specifically linked to the alphabetical subdivisions Mr. Popkin presented. At the same time, the absence of a direct reference to subpart a does not necessarily mean that the response is deficient. Indeed, the last sentence of the Service's answer entails a statement that provides the requested confirmations for both subparts a and b: that is, unless the Service contracts for minimum speeds, it could not confirm that they are lower than the applicable speed limits.

With respect to DBP/USPS-43, no further purpose would be served by requiring a compelled answer, as the Service has stated that it is unable to locate responsive records that would allow it to provide the requested confirmation and explanation. The inability of the Service to locate these records is itself indicative of conditions under review in this proceeding. However, the Service is aware that it is under an ongoing

⁶ As of the issuance of this ruling, no filing on point had been received from the Postal Service.

obligation to supplement answers if the records it would need to provide an answer should materialize. Thus, no further response need be provided at this time.

The situation with respect to DBP/USPS-47 is somewhat different, but the result is the same. Here, in lieu of the requested list, the Service has answered that air transportation is not used to meet 2-day standards, nor to advance the delivery time that otherwise would be obtained if mail with the same service standard were transported by surface. It also has explained that one could hypothetically convert a substantial percentage (if not almost all) 2-day pairs to overnight pairs, assuming access to a perfect supply of transportation and other essentials, but said accomplishing this in the real world would, among other things, be complicated. It said the same would be true of converting 3-day service standards to 2-day and overnight service.

In other words, a reasonable interpretation of the answer is that the Service takes issue with the essential premise of the question – namely, that air/surface decisions proceed from a straightforward quid pro quo. In nevertheless addressing hypothetical circumstance, the Service has indicated that the requested list could essentially include all pairs. As such, I find that no further purpose would be served by compelling a further response.

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], filed November 5, 2001 by Mr. Popkin is granted in part, as explained in the body of this ruling.
2. The Motion to Compel Response to Interrogatories That Have Not Been Fully Responded To, filed November 21, 2001 by Mr. Popkin is granted in part, as explained in the body of this ruling.

3. The Motion of the United States Postal Service for Late Acceptance of Responses to Interrogatories of David Popkin, filed November 13, 2001, is granted.

A handwritten signature in black ink, appearing to read "Ruth Y. Goldway". The signature is written in a cursive, flowing style with a large initial "R".

Ruth Y. Goldway
Presiding Officer