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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S  
RULING NO. C2001-3/13

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  
MOTION TO COMPEL RESPONSES TO  
DBP/USPS-71(C) AND DBP/USPS-76

(Issued December 18, 2001)

This ruling addresses interrogatories DBP/USPS-71(c) and 76; objections by the Postal Service to both questions; a motion to compel responses from David B. Popkin; and the Service's reply.<sup>1</sup>

*DBP/USPS-71(c)*. This question asks for a list of each instance (and time incurred) when drivers use routes other than those determined "most appropriate" by the Postal Service's software.<sup>2</sup> The Service initially stated that there is no requirement that drivers use the route projected by PC Miler, so it has no such records. It also objected on grounds that it is unclear why this information is sought or how its production would help resolve material legal issues in this complaint. Postal Service Objections at 1. In addition, the Service said it is impossible to calculate the burden of

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<sup>1</sup> Objections of the United States Postal Service to Interrogatories of David Popkin, November 5, 2001 (Postal Service Objections); Motion to Compel Response to Interrogatories DBP/USPS-71(c) and 76, November 19, 2001 (Popkin Motion to Compel); and Reply of the United States Postal Service to Motion of David B. Popkin to Compel Responses to Interrogatories, November 27, 2001 (Postal Service Reply). The Postal Service Reply was preceded by a motion for late acceptance. United States Postal Service Motion for a One-Day Extension of Time to File Opposition to Motion to Compel, November 26, 2001.

<sup>2</sup> DBP/USPS-8(b) asks: What is the requirement of the ending of the 12-hour time frame? Is it the Critical Entry Time at the ADC? Is it the Critical Entry Time at the individual destination P&DC? If not, what time was chosen and what is the relationship of that time to the Critical Entry Time? Among other things, the Service said the "ending" of the 12-hour drive time comes when PC Miler, used in conjunction with the time zone adjustments contained in the model, projects a drive time of more than 12.05 hours.

developing the requested information. It noted, among other things, that there are thousands of daily runs among hundreds of facilities, and says each one would have to be audited and analyzed. *Id.*

In support of a compelled answer, Mr. Popkin contends it is important to evaluate the application of the 12-hour drive time because the Service uses this criterion to distinguish between 2-day and 3-day service standards. He believes knowing the difference between the actual travel time incurred using the Postal Service-determined route and that incurred when other routes are followed would help him make this evaluation. Popkin Motion to Compel at 1.

*Postal Service's position.* The Service contends that this question reflects an interest much broader than the immediate case, namely Mr. Popkin's interest in examining "the entire surface transportation network truck-by-truck, route-by-route." Postal Service Reply at 1. It also expands on the burden argument, noting that a response would entail reviewing all records related to each truck trip on every route and, for each route, providing a comparison between the drive times projected by PC Miler software and actual drive times. The Service estimates that it would take several weeks to manually isolate which trips among its facilities were direct and which went through (or between) Hub and Spoke (HASP) transfer facilities, plus an additional two weeks for generating and compiling the data after necessary programming work was completed. *Id.* at 1-2. Also, the Service says "reasonableness" can be judged on whether the 12-hour standard has a rational foundation, and argues that this was explained in the July 30, 2001 Gannon Declaration and in numerous interrogatory responses. *Id.* at 4. Moreover, the Service says the comparison Mr. Popkin is interested in is unnecessary and immaterial to the issues in this proceeding. *Id.* at 5.

*Discussion.* Several factors contribute to the conclusion that Mr. Popkin's motion should be denied with respect to DBP/USPS-71(c). First, alternative routes and related times have minimal relevance to this proceeding. To the extent Mr. Popkin is interested in challenging the 12-hour standard, the appropriate focus, as the Service suggests, is on whether the Gannon Declaration and interrogatory responses provide a rational

foundation for it. Second, the Service indicates it maintains no records; therefore, records would have to be specially developed. Third, the Service has clearly identified reasons why the burden associated with developing records would be extensive. Accordingly, the Service will not be compelled to provide an answer.

*DBP/USPS-76.* This question asks for confirmation that air transportation is not utilized between Honolulu and Hilo, Hawaii or between other inter-island offices in Hawaii that have overnight service.<sup>3</sup> In the absence of confirmation, Mr. Popkin asks for an explanation. The Service initially objected to answering this question on grounds that the issues in this proceeding relate to service standard changes in the 48 contiguous states; therefore, it says the issue of how mail is transported intra-state in Hawaii between Honolulu and Hilo has no bearing on the question of whether the changes at issue here comply with 39 U.S.C. §§ 3661 and 3662. Postal Service Objection at 2. Accordingly, it says this question seeks information that is not relevant or necessary to resolve the issues in this complaint. *Ibid.*

*Motion to compel.* In support of his motion to compel, Mr. Popkin contends he is attempting to clarify the Service's answer to interrogatory DBP/USPS-17(a). In particular, he says his perception is that the mail between Honolulu and Hilo, Hawaii, which has an overnight delivery standard, is transported by air. Popkin Motion to Compel at 1-2.

*Postal Service's position.* In opposing Mr. Popkin's motion, the Service notes that the service standard changes at issue pertain only to 2-day and 3-day First-Class Mail and that the changes affected mail in the contiguous 48 states. Postal Service Reply at 5. Thus, it claims the interrogatory is patently irrelevant on two counts because it asks about overnight First-Class Mail between points within Hawaii. However, the Service also says it will revise its answer to question 17(a) to indicate that there are

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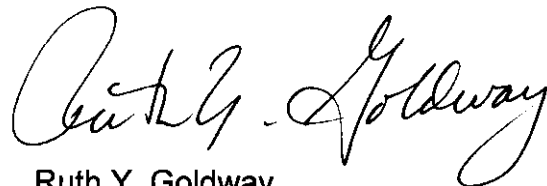
<sup>3</sup> DBP/USPS-17(a) asks: Please advise those Origin-Destination ZIP Code pairs where air transportation is utilized to transport mail which has an overnight delivery service. For each of these pairs, indicate whether or not the use of surface transportation would have resulted in two or more day service. The Service answered: 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.

some continent/island transfers of overnight First-Class Mail involving islands in the Great Lakes and off the coast of Massachusetts. *Id.* at 6, fn. 7.

*Discussion.* As the Service has now filed a revised answer to question 17(a), I find that the requested clarification and explanation (in lieu of confirmation) have been provided. Accordingly, the motion is deemed moot with respect to DBP/USPS-76.

#### RULING

1. The Motion to Compel Response to Interrogatories DBP/USPS-71[C] and 76, filed by David B. Popkin on November 19, 2001, is disposed of as follows:
  - a. Interrogatory DBP/USPS-71(c) denied; and
  - b. Interrogatory DBP/USPS-76 is deemed moot.
  
2. The United States Postal Service Motion for a One-Day Extension of Time to File Opposition to Motion to Compel, filed November 26, 2001, is granted.



Ruth Y. Goldway  
Presiding Officer