

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE AND FEE CHANGES, 2001

Docket No. R2001-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE TO MOTION
TO COMPEL RESPONSE TO POPKIN INTERROGATORIES
DBP/USPS -93, 101, 121, 98(b), 100(b), AND 96
(January 11, 2002)

The United States Postal Service hereby opposes Mr. Popkin's motion to compel with respect to the above interrogatories, filed on January 4, 2002.

DBP/USPS-93

Initially, the Postal Service notes that although the style of Mr. Popkin's motion might suggest that Mr. Popkin is moving to compel responses to all subparts of question 93, the text plainly indicates acknowledgment that he has received sufficient information with respect to subparts e through g and that he is not moving to compel with respect to those portions of the question. Therefore, what remains in contention are subparts a through d, and h through i.

Question 93 seeks information about collection box schedules, and it may be useful to begin the discussion with repetition of the point made earlier in the Postal Service's December 13th response to the motion to compel materials sought in DFC/USPS-20, also relating to collection boxes. The fundamental relevance of collection boxes to value of service comparisons is that some subclasses benefit from the collection network, and other subclasses do not. Intricate operational details of the collection box network do not change this fundamental distinction, and therefore lack relevance and materiality in the context of omnibus rate cases such as the instant

proceeding. The Postal Service objected to all parts of question 93 on that basis, and maintains that objection. Moreover, as also noted in the Postal Service's objection, even with respect to the material provided in response to OCA/USPS-292, upon which question 93 purports to follow-up, the Postal Service specifically preserved its right to challenge the relevance and materiality of that material, in anticipation of potential attempts (such as the one Mr. Popkin has now presented) to go even further afield from issues germane to ratemaking.

The information sought in DBP/USPS-93 is intrinsically irrelevant. Mr. Popkin suggests on page 1 the specific example of the 25 percent figure from 2001 between 4 and 5 PM. (That is to say, the response to OCA/USPS-292(a) indicated that in 2001, 25 percent of collection boxes had a last weekday pickup between 4 PM and 4:59 PM.) Taking this example, suppose that the breakout for the 4-5 PM hour into 15-minute intervals showed that all 25 percent actually fell between 4:45 and 5 PM, and none fell between 4 and 4:45 PM. Alternatively, at the other extreme, imagine that all 25 percent fell between 4 and 4:15 PM. Lastly, suppose that the 25 percent total were split evenly (25/4, or approximately 6 percent) into each of the four 15-minute intervals. What consequences would any of these scenarios possibly have on the appropriate level of rates and fees?¹ In fact, *any* possible results of the analyses that Mr. Popkin is requesting simply would have no bearing on what might be the appropriate levels of rates and fees in this proceeding.

^{1/} Similarly, with respect to subparts h and i, what is the relevance to ratemaking of whether it is 5 percent, or 20 percent, or 35 percent of collection boxes that were not scheduled for pickup on Saturdays in 2001?

Mr. Popkin's explanation of his views on the relevance of the material he is seeking is as follows:

The inquiries contained in my follow-up subparts a through d are needed to fully evaluate the level of service that is being provided in collection boxes. Because of the larger percentages that are in the categories requested and because of the perceived [and therefore attempting to resolve] instances where there are many collection boxes that are collected early in the morning or are collected shortly before 5 PM when they should be collected at 5 PM or later because they develop over 100 pieces of mail daily, or where they are collected at 5 PM as opposed to the later time that they are actually collected. These breakdowns are an attempt to further observe the extent to which the Postal Service is complying with the provisions of the Postal Operations Manual in providing the level of service that they are mandated to.

Motion to Compel at 2. The Postal Service does not purport to comprehend the entirety of this argument, but to the extent that it can be understood, it fails to demonstrate any relevance of the material sought. First, rather than relating to the intersubclass evaluations of value of service that are useful in the pricing process, Mr. Popkin's concern appears to be focused exclusively on attempting to identify instances in which collection box schedules are at variance with provisions of the POM. Such efforts would not further the process of recommending appropriate rates and fees. Second, even assuming *arguendo* that such matters did have any relevance, to the extent that Mr. Popkin himself identifies 5 PM as the relevant benchmark for purposes of the POM provisions he has in mind, it is unfathomable why he purports to need the information between 4 PM and 6 PM broken into 15-minute increments, when he already has information by hour, including both before 5 PM and after 5 PM. If the POM benchmark of interest to him (irrelevant as it is to ratemaking) were 4:15 or 5:45 as opposed to 5 PM, his request at least superficially might make some sense. His professed interest in

the POM and the 5 PM benchmark sheds no light on why it is necessary to have weekday breakouts in 15-minute increments between 4 and 6 PM (subparts b-c), and certainly sheds no light on why it is necessary to have weekday breakouts before 2 PM (subpart a) and Saturday breakouts before 10 AM (subpart d). There appears no logical nexus between the information he has sought, and his explanation of why he believes it to be relevant.

Mr. Popkin's emphasis on the POM, however, does serve to underscore why his question 93 is not appropriate follow-up to OCA/USPS-292. The OCA was attempting to probe the possibility of shifts in collection schedules over time. Mr. Popkin is not attempting to clarify or elaborate on that line of inquiry. Instead, as stated at the top of page 2 of the motion, he is seeking to explore compliance with the POM. If Mr. Popkin wished to pose questions on that topic, he had until November 26th to attempt to do so (although even a timely request would have been equally irrelevant). He should not be allowed to use timely questions on one topic as a pretext to launch his own untimely excursion into a different topic.

With respect to burden, Mr. Popkin argues that the burden of responding to his questions should be reduced by virtue of the similarity between the nature of his requests and those sought in OCA/USPS-292. The Postal Service, however, had already accounted for this in its objection:

Specifically, parts a.-d. seek finer breakdowns of information already provided in response to the OCA's question, and would require further programming to extract. To respond to the OCA's request, personnel at San Mateo spent approximately 40 hours. While there might be somewhat less time required to address Mr. Popkin's questions, it is still estimated that it would take the better part of one entire work week to generate information in the format he has requested in subparts a.-d.

Mr. Popkin in his motion offers to accept data for only one year, 2001. Personnel at San Mateo estimate, however, that reducing the scope of the request from 3 years to 1 year would eliminate less than one-third of the necessary effort, and that it would still take between 2 and 3 days of work to respond to even this more limited inquiry. Given the irrelevance and immateriality of the material sought, its untimely request, and the associated undue burden, the motion to compel a response to parts a-d and h-i of DBP/USPS-93 should be denied.

DBP/USPS-101

Question 101 seeks specific examples of offices on the west coast that “hold out” priority mail destined for “nearby” places, so that this priority mail does not travel via FedEx through its Memphis Hub. The question reads as follows:

Please refer to your response to DBP/USPS-73, subpart b [in which the Postal Service stated that each office has its own policy for holding out mail to locations that are sufficiently “nearby,” and that such mail would not therefore move via FedEx]. Can you provide me with examples of offices on the west coast that are “nearby” enough to each other that they will be within the third zone to each other and yet will normally process Priority Mail between them via the FedEx Memphis hub? If so, provide the examples.

On December 27, 2001, the Postal Service objected to this interrogatory because the information it requests is irrelevant. Mr. Popkin appears to be concerned that extra transportation costs will be incurred by sending Zone 3-rated Priority Mail through the FedEx Memphis hub. However, it is the Postal Service’s business alone to decide on the proper and most efficient routing of mail.

Moreover, whether a piece goes back and forth on FedEx through the Memphis hub does not necessarily result in greater or lesser transportation costs. As witness Pickett has stated, “Test Year FedEx network costs are treated as non-distance related

in light of the fact that there is no mileage component to the rates FedEx charges for transportation service.” USPS-T-17, at 3.

In his motion to compel, Mr. Popkin asserts that “[w]hile the present FedEx contract does not provide for a mileage component in the charge to the Postal Service, in general, the costs to a transportation carrier will increase based on the distance the article is transported.” Mr. Popkin goes on to speculate that “the rates that FedEx and the Postal Service will arrive at in the future will be based on FedEx’s evaluation of the profile of the distances articles are transported.”

Mr. Popkin’s concerns about the future are irrelevant in this proceeding. What matters in this case is the cost the Postal Service is paying for transportation services from various carriers, not how and why those carriers establish the prices they charge. Moreover, even if those questions were relevant, the Postal Service is not privy to the internal details of FedEx’s, or any other transportation carrier’s, cost structure.

In seeking to compel a response, Mr. Popkin speculates that (1) the Postal Service will enter into unspecified transportation contracts with FedEx in the future; (2) the rates for those unspecified contracts will be based on a particular thought process by FedEx; and (3) certain circumstances will cause those rates to increase. This rank speculation is no basis to compel a response to an irrelevant interrogatory.

Mr. Popkin also argues that “[i]f the Presiding Officer and others felt it was relevant to ask questions and receive responses regarding the use of the Memphis FedEx Hub, a response to this interrogatory is equally relevant.” He apparently is referring to POIR 5-8, in which the Presiding Officer asked for the “typical path a Priority Mail piece would follow” between five selected examples of origin and destination cities.

The Postal Service did not object to providing this background information, about five examples nationwide, to the Presiding Officer. This is hardly an admission that Mr. Popkin's request, which could be read to seek every pair of offices on the West Coast that does not use FedEx, is relevant.

The operational details of what mail, from what office, does or does not go through the FedEx Memphis hub is not materially related to the issues in this proceeding. Thus, the Postal Service should not be required to answer this interrogatory.

DBP/USPS-121

In Question 121, Mr. Popkin seeks detailed information about the proportion of Priority Mail pieces that are transported through FedEx's hubs in Memphis and Indianapolis, as well as on point-to-point aircraft from Nashua to Philadelphia to Miami and back:

Please refer to your response to DBP/USPS-77 [should read 73], subpart a as revised on December 20, 2001. [a] Please advise the proportion of mail handled by FedEx that is transported via their Memphis Hub vs. their Indianapolis Hub vs. their point-to-point aircraft from Nashua to Philadelphia to Miami and back. [b] Please provide an indication of the origin and/or destination of the mail that is transported via their Memphis Hub vs. their Indianapolis Hub vs. their point-to-point aircraft from Nashua to Philadelphia to Miami and back. [c] Short of major failure, does either Hub serve as a backup for the other? If so, provide the details.

On December 31, 2001, the Postal Service objected to this interrogatory because the requested information is irrelevant and commercially sensitive.

The proportion of mail, or the origin/destination of mail, transported on various routings by FedEx is not relevant to these proceedings. It is up to the Postal Service and FedEx to determine how best to route mail under the FedEx contract. This is no

concern of Mr. Popkin. Likewise, the operational details of whether and how one FedEx hub or another serves as a backup is not germane to the issues in this proceeding.

Furthermore, whether a piece of mail goes back and forth on FedEx through the Memphis hub or the Indianapolis hub or on another route does not necessarily mean greater or lesser transportation costs. As witness Pickett has stated, “Test Year FedEx network costs are treated as non-distance related in light of the fact that there is no mileage component to the rates FedEx charges for transportation service.” USPS-T-17, at 3. Thus, the information requested in this interrogatory is irrelevant.

In addition, the details of the proportion of mail traveling on various FedEx routings, the origin/destination of that mail, and FedEx’s use of its hubs is commercially sensitive to the Postal Service, and likely also to FedEx. Postal Service competitors, knowing this information, could gain valuable information about mail flows under the FedEx contract. Presumably, FedEx competitors also might be able to gain valuable information about FedEx’s mail flows if the requested information were to be made available.

In his motion to compel, Mr. Popkin claims that this information is relevant “[f]or the same reasons as noted in DBP/USPS-101.” Accordingly, the Postal Service incorporates the arguments in its opposition to the motion to compel a response to Question 101, which are listed above.

Thus, the Postal Service thus should not be required to answer this interrogatory.

DBP/USPS-98(b):

This interrogatory asks the Postal Service to provide a copy of a draft proposed Domestic Mail Manual (DMM) interpretive rule pertaining to Express Mail refund limitations. The Postal Service objected to this interrogatory on grounds of deliberative process privilege. The Postal Service explained that it is still formulating the proposal and discussing its contents.

In its objection, the Postal Service explained that it would provide a partial response to this interrogatory indicating its intent regarding the proposed rule. The Postal Service will further update that response once draft DMM language is finalized. Thus, the issue is arguably moot.

DBP/USPS-100(b):

This interrogatory asks when the Postal Service decided to propose changes to Domestic Mail Classification Schedule (DMCS) sections 182.51 and 182.52. The Postal Service objected to this interrogatory on grounds of relevance. The Postal Service explained that the time when a decision is made to go forward with a particular classification change is irrelevant, since such information does not shed light on the substantive merit of the proposed change.

Mr. Popkin's Motion to Compel does nothing to establish the relevance of the information. Whether the Postal Service decided to go forward with the proposed DMCS changes before or after September 11 would in no way alter the proposed language. The proposed change is intended to be prospective; it is not intended to apply retroactively to September 11. Hence, the information requested is completely irrelevant to the Commission's evaluation of this proposal.

DPB/USPS-96

In this interrogatory, Mr. Popkin purports to follow upon the response to interrogatory OCA/USPS-299:

DBP/USPS-96 Please refer to your response to OCA/USPS-299. Besides the references to post office boxes and street delivery, are there any other forms of delivery for Express Mail? If so, please specify.

The Postal Service objected on the grounds of improper follow-up.²

Interrogatory OCA/USPS-299 inquired:

OCA/USPS-299. Please describe the process used by the Postal Service to ensure that POS-1 [sic] terminals contain accurate information about Express Mail delivery times.

The response to that interrogatory explains the source and frequency of updates to POS ONE terminals (the same source used to identify Express Mail commitments on the Postal Service web site), and well as distinctions among them (one type of terminal currently displays a warning about delivery to post office boxes lacking weekend access). The response further refers to two other interrogatory responses that provide substantial additional information.

As such, Mr. Popkin's interrogatory DBP/USPS-96, which inquires into forms of delivery for Express Mail, is in no sense of the word enabled by the response to OCA/USPS-299. DBP/USPS-96 does not constitute "a new question [that] is a logical next step in consideration of the issue." POR R90-1/56, at 2. He could quite easily have asked this interrogatory during the scheduled discovery period. *Id.* In any event,

^{2/} Objection Of The United States Postal Service To David B. Popkin Interrogatories DBP/USPS-94 and 96 (January 3, 2002).

his question is sufficiently simplistic that a postal observer of his stature and experience most certainly can already fashion a response. Indeed, Mr. Popkin himself concedes that the connection between the two is attenuated. Motion to Compel at 4. Mr. Popkin should not be permitted "either [to ask] new questions or seek to expand questions already answered " in the guise of follow-up. POR R2000-1/98, at 5.

Wherefore, Mr. Popkin's motion to compel responses to DBP/USPS-93, 101, 121, 98(b), 100(b), and 96 should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

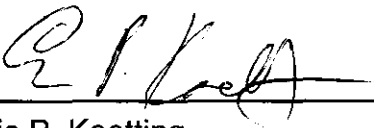
By its attorney:



Eric P. Koetting

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Eric P. Koetting

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