

RECEIVED

JAN 14 10 30 AM '02

PRESIDING OFFICER'S  
RULING NO. R2001-1/32

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

Postal Rate and Fee Changes

Docket No. R2001-1

PRESIDING OFFICER'S RULING CONCERNING  
DAVID B. POPKIN MOTION TO COMPEL  
RESPONSES OR FURTHER RESPONSES TO  
DBP/USPS-30, -9, -67, -72, -76(b), -83, AND -33(a)

(Issued January 14, 2002)

This ruling considers a motion<sup>1</sup> filed by limited participator David B. Popkin to compel the United States Postal Service to provide responses, or further responses, to seven interrogatories (or parts thereof) he had directed to the Service. The interrogatories at issue are DBP/USPS-30, -9, -67, -72, -76[b], -83, and -33.

DBP/USPS-30. This interrogatory asks the Postal Service to confirm six statements regarding the nature and characteristics of cards and Stamped Cards. The Service objected that the interrogatory's questions "are burdensome, given that the answers would reveal nothing more than what the casual reader could independently conclude by simply reading the classification language" defining cards and Stamped Cards in the Domestic Mail Classification Schedule.<sup>2</sup> In his motion, Mr. Popkin argues that the Service should be required to confirm his understanding of the applicable provisions, and observes that the Service invoked the ground of undue burden without providing an estimate of the cost and works hours needed to prepare a response, contrary to the requirement of § 26(c) of the rules of practice.

---

<sup>1</sup> David B. Popkin Motion to Compel Response to Interrogatories [Both Those That Have Been Objected to as Well as Those That Have Not Been Fully Responded to], December 17, 2001 ( hereafter "Motion of December 17").

<sup>2</sup> United States Postal Service Objection to Interrogatories DBP/USPS-30-31, and -58, December 3, 2001, at 1.

The Postal Service responded to Mr. Popkin's motion to compel a response to this interrogatory in a pleading<sup>3</sup> filed on December 20. In its response, the Service undertakes to identify the burden of preparing a response, but declares its willingness to spare the Commission's resources by voluntarily filing a response to the interrogatory, which it did the same day.<sup>4</sup>

In view of the Service's ultimate response, this aspect of Mr. Popkin's motion shall be dismissed as moot.

DBP/USPS-9. This interrogatory consists of a series of questions about the applicability of the Postal Service's postage refund guarantee for Express Mail, largely in the context of Second-Day Express Mail that is not delivered by the second day after mailing. The Service objected on the ground that the requested information is "beyond the scope of this docket" because it is neither relevant nor material to the determination of appropriate Express Mail rates.<sup>5</sup>

Mr. Popkin's motion asserts that the Service's Express Mail refund policy "is a component of the value of service to the mail and therefore is relevant." Motion of December 17 at 1. The Service replies that "refunds are not a component in determining Express Mail rates and, therefore, is not germane to this proceeding."<sup>6</sup>

I agree with Mr. Popkin that the scope of the Service's Express Mail refund guarantee, and its practical implementation, are germane to the value of that service, and thus are appropriate subjects of inquiry in this rate proceeding. As noted in previous rulings, the Commission has expressed concern about "the high on-time

---

<sup>3</sup> Response of United States Postal Service to Motion of David B. Popkin to Compel a Response to DBP/USPS-30, December 20, 2001.

<sup>4</sup> Response of United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-30), December 20, 2001.

<sup>5</sup> Objection of the United States Postal Service to David B. Popkin Interrogatories DBP/USPS-9, 62(a)-(g), and 67, December 6, 2001.

<sup>6</sup> Opposition of the United States Postal Service to David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-9 and 67, December 31, 2001, at 1-2. The Service's Opposition was accompanied by its Motion for Late Acceptance of United States Postal Service Opposition to David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-9 and 67, which shall be granted.

failure rate [of Express Mail]...which seems inconsistent with a guaranteed service.”<sup>7</sup> This statement was made in the context of Express Mail’s quality of service, which the Postal Service has characterized as “premium.”

When Express Mail fails to achieve its guaranteed delivery performance, the refund of postage serves as a “consolation prize” for the mailer, contributing to the intrinsic quality of Express Mail service in a way that is unique among the Postal Service’s offerings. *The limits of this ancillary benefit, and details of its implementation,* can reasonably be expected to bear directly on a user’s perception of the value of Express Mail service. Accordingly, I shall grant Mr. Popkin’s motion with respect to this interrogatory.

DBP/USPS-67. This interrogatory cites the Service’s response to a portion of Interrogatory OCA/USPS-25, and poses 16 follow-up questions concerning access to postal facilities and other details of postal operations on weekends and holidays. The Postal Service objected to answering these detailed questions on the grounds of irrelevance to ratemaking and the excessive burden of gathering responsive information.<sup>8</sup>

In his Motion of December 17, Mr. Popkin notes that Express Mail is advertised as a 365-day-a-year service—which includes weekends and holidays—and asserts that “the extent to which service is met on weekends and/or holidays is a component of the value of service to the mailer and therefore is relevant.” Motion at 1. He also argues that the Service’s response to OCA/USPS-25(d) opens the door for inquiries on weekend and holiday delivery, and that the Service’s responses to other interrogatories contain conflicting information regarding Express Mail deliveries. Finally, Mr. Popkin asserts that the Service’s claim of undue burden does not estimate work hours and costs required to prepare a response, which § 26(c) of the rules prescribes. *Id.* at 2.

In its Opposition, the Postal Service reiterates its argument that the interrogatory requests information that has no factual relevance to this ratemaking proceeding. On

---

<sup>7</sup> PRC Op. R2000-1, November 13, 2000, para. 5013.

the subject of undue burden, the Service claims that it had provided an estimate of the required cost and work hours at the time of its objection "to the extent possible," as § 26 of the rules requires. It adds that the requested information is voluminous in nature, would have to be compiled manually to a large extent, and would require hundreds of work hours to retrieve, according to Delivery and Retail personnel.<sup>9</sup>

I agree with Mr. Popkin's premise that information regarding weekend and holiday delivery of Express Mail may, categorically, be relevant to the issue of establishing the value of that service. However, I do not agree that this premise justifies requiring the Postal Service to unearth and report the extensive operational minutiae sought in this interrogatory. The Postal Service's representation that retrieving information such as "a listing of all facilities that normally provide street delivery on weekdays that do not provide Express Mail street delivery on Saturday" (DBP/USPS-67[i]) would require hundreds of work hours of labor is credible, and I find it to be unduly burdensome in light of the marginal contribution such detailed information would make to the record. Therefore, I shall deny the motion with respect to this interrogatory.

DBP/USPS-72 and -76[b]. These interrogatories request information about the levels of service and compliance with requirements for return receipt service over the past 11 years, and letters or directives on the procedures for handling certified mail and return receipts since Docket No. R90-1. The Postal Service lodged a partial objection, agreeing to provide responsive documents from its Headquarters issued from Fiscal Year 2000 to the present. However, it objected to searching for older documents on the grounds of overbreadth and undue burden, and to providing facility-specific volume information for return receipts and certified mail, on the grounds of relevance and commercial sensitivity.<sup>10</sup>

---

<sup>8</sup> *Opposition of the United States Postal Service to David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-9 and 67, supra*, at 2-3.

<sup>9</sup> *Ibid.*

<sup>10</sup> Partial Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-72, 76(b)), December 6, 2001.

In his Motion of December 17, Mr. Popkin states that he is willing to accept the Service's offer to provided data from FY 2000 until the present, if the Service includes data generated from the start of Docket No. R2000-1. To the extent any responsive material contains redactions of facility-specific mail volume data, Mr. Popkin agrees to evaluate the redacted material in order to determine whether to object to the redaction or to move for protective conditions. He also notes that the Service did not provide the estimate of cost and work hours required by § 26(c) of the rules to support a claim of undue burden, and challenges the Service's claims of overbreadth and burden on the ground that there were never more than 11 area offices for which data would have to be sought. Motion at 2.

In its response, the Postal Service states that its offer to provide documents from FY 2000 forward was intended to include any responsive documents that may have been issued since the last rate case, in which discovery responses were provided midway through FY 2000. Further, the Service states its willingness to rely on its responses to Mr. Popkin's interrogatories in past dockets for periods prior to FY 2000 as its answers now. Finally, the Service notes that it filed a response to Interrogatory OCA/USPS-236 on December 19, which includes about 40 pages of attachments concerning certified mail and return receipt practices and directives, most of which originate from or concern area offices and the field. According to the Service, this response—in conjunction with related responses to Messrs. Popkin and Carlson and others to the OCA—should satisfy Mr. Popkin's desire for data from area offices and make an adequate record on which to evaluate issues in this case involving certified mail and return receipts. Therefore, the Service submits, the issues raised in Mr. Popkin's motion to compel have been resolved.<sup>11</sup>

Mr. Popkin has filed no rejoinder to the Service's response. Upon examination of the materials already provided by the Postal Service, and given Mr. Popkin's agreement to the limitations noted above, the controversy over the ambit of responses to these

---

<sup>11</sup> Response of the United States Postal Service to Motion to Compel Response to Interrogatories of David B. Popkin (DBP/USPS-72, 76(b)), December 26, 2001.

interrogatories appears to have been resolved by intervening events. Therefore, I shall dismiss Mr. Popkin's motion regarding these interrogatories as moot.

DBP/USPS-83. This interrogatory refers the Postal Service to its response to Presiding Officer's Information Request No. 5, Question 8, subpart c, which describes the typical travel path a Priority Mail piece would follow between Los Angeles, California and Eureka, California. That response indicates that the piece would be transported from California to the FedEx Memphis Hub and returned to California for delivery.<sup>12</sup> The interrogatory poses five questions, three of which request listings of processing facilities and related ZIP Code information. The other two ask the Service to confirm, or explain if unable to do so, general statements regarding Priority Mail processing under the Service's agreement with FedEx. The Postal Service objected to this interrogatory on the grounds that it does not constitute appropriate follow-up to the POIR question and answer; that the requested information is irrelevant to any issue to be decided in this proceeding; that it would be unduly burdensome to answer, in part; and that some of the requested information is commercially sensitive in nature.<sup>13</sup>

In the Motion of December 17, Mr. Popkin argues that the interrogatory is appropriate and that the requested information is relevant to Priority Mail rates. Even if it might be deemed improper as follow-up to the POIR question, he notes that responding witness Spatola is in the second half of designated witnesses for the Postal Service, and thus his interrogatory is timely. Motion at 4. He explains that the objective of parts (a) through (c) of the interrogatory is to establish whether any Priority Mail mailings in the lowest rate zone—which would also include pieces delivered across town in the originating city—are typically sent to the FedEx Memphis Hub and returned for intrastate delivery. According to Mr. Popkin, the Service's provision of an example in the format of the original response to the POIR question that uses a two-city intrastate pair within the 3<sup>rd</sup> rate zone would be a satisfactory response to parts (a)

---

<sup>12</sup> Response of the United States Postal Service to Presiding Officer's Information Request No. 5, November 26, 2001, Response to Question No. 8(c).

<sup>13</sup> Objection of United States Postal Service to Interrogatory of David B. Popkin—DBP/USPS-83, December 10, 2001.

through (c); lacking such an example, Mr. Popkin claims that he needs the requested data to evaluate it himself. *Id.* at 3-4.

Mr. Popkin further argues that PMPC data should be provided because such facilities have been mentioned in other responses, and a listing that includes only AMCs would be incomplete. He also observes that subpart (c) does not require every ZIP Code prefix in the country, as the Service claims, but only a listing of those areas in the vicinity of the AMC or PMPC that use that facility for the dispatch and receipt of Priority Mail from the rest of the country. Finally, he claims that the Postal Service objection on the ground of undue burden is not supported by the estimate of cost and work hours required in § 26(c) of the rules. *Id.* at 4-5.

In its response,<sup>14</sup> the Service argues that Mr. Popkin's explanation does not establish the relevance of the requested information, as it is unrelated to issues to be decided in this ratemaking proceeding. According to the Service, the proper and most efficient routing of mail is the Postal Service's decision to make. Further, citing a statement from witness Pickett's testimony, the Service claims that transit through the FedEx Memphis Hub does not necessarily mean the Service incurs greater, or lesser, transportation costs. Similarly, the Service argues that the operational information sought in subparts (d) and (e) of the interrogatory is not materially related to issues in this case.

I disagree with the Postal Service's claim that operational information of the kind sought in this interrogatory is irrelevant to issues in these proceedings. As a general matter, an understanding of operations affecting the collection, transportation, processing and delivery of different categories of mail is necessary to locate the sources of cost-causative elements. Additionally, major changes in operations affecting the way in which a category of mail transits through the postal system can have rate and/or mail classification implications for that mail. Illustratively, in Docket No. R97-1, the diminished value of presorting Priority Mail in the context of PMPC processing

---

<sup>14</sup> Opposition of United States Postal Service to David B. Popkin Motion to Compel a Response to Interrogatory DBP/USPS-83, December 26, 2001.

under the Service's contract with Emery World Airlines was cited by the Service as one basis for the Service's proposal to abolish the presorted Priority Mail classification at that time, which the Commission duly recommended.<sup>15</sup>

While Mr. Popkin's interrogatory is germane to the operational matters explored in POIR No. 5, Question 8, it exceeds the scope of my inquiry by requesting a detailed *identification of facilities and associated ZIP Codes*. Since his declared objective is to establish whether any Priority Mail piece mailed from one address in California to another at the Local, 1, 2, 3 Zone rate ever transits via the FedEx Memphis hub, there is no real need for the Postal Service to produce this detailed information. Therefore, in order to resolve the controversy concerning subparts (a) through (c) of the interrogatory, I shall direct the Postal Service to identify examples of origin/destination Zip Code pairs within California that satisfy the criterion stated by Mr. Popkin.

Subparts (d) and (e) are also germane to the operational matters raised in POIR No. 5's Question 8 concerning Priority Mail. They ask the Postal Service to confirm or otherwise explain clearly stated factual propositions about Priority Mail transportation and processing facilities. Consequently, I shall grant Mr. Popkin's motion as to these subparts, and *direct the Postal Service to provide responses*.

DBP/USPS-33(a). This interrogatory asks for the total revenue and expenses for each of the past five years for: (a) International Mail; (b) the sale of Phone Cards and Money Cards; and (c) each of the various items of merchandise in the second category. The Postal Service filed a response to this interrogatory on December 10, 2001, stating that information regarding the total revenues and costs of International Mail are available in the Service's library at its headquarters, or through the Commission's docket room or website. For the merchandise specified in subpart (b), the Service stated that it does not track revenue and expenses for the various items, but that some responsive information can be found in Library Reference USPS-LR-I-248, and that additional information would be forthcoming in response to OCA's Interrogatory OCA/USPS-240.

---

<sup>15</sup> See PRC Op. R97-1, May 11, 1998, paras. 5280, 5286-89.




In his Motion of December 17, Mr. Popkin seeks a further response to subpart (a) of the interrogatory, arguing that the Service should be required to provide the ten requested numbers that comprise International Mail aggregate revenue and cost results for the past five years. Lacking such a response, Mr. Popkin argues that requiring him to travel to Washington to retrieve the information—and to provide testimony introducing the data into the record rather than just designating a substantive response—“is an attempt at reducing my due process rights.” Motion at 5.

A search of the Commission's docket section did not yield a specific Postal Service response to Mr. Popkin's motion regarding DBP/USPS-33(a).

The Postal Service's response to this interrogatory could have been more helpful; however, it correctly states that the requested figures are available from the Commission's website, [www.prc.gov](http://www.prc.gov). The requested International Mail results are available from the Commission's compilation of Cost and Revenue Analysis (CRA) Summaries for Fiscal Years 1969 through 2000, as line items in each year's CRA. This compilation is available as a zipped downloadable Microsoft Excel file. This file can be accessed from the Commission's homepage by clicking on “Contents” near the top of the screen, followed by selecting “Periodic Reports” in the left frame, and clicking on “Data” under that category. If movant encounters any difficulty in accessing this information, I invite him to contact the Commission's docket section for assistance. At this point, I shall deny his motion to require the Postal Service to provide a further response.

RULING

1. The Motion for Late Acceptance of United States Postal Service Opposition to David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-9 and 67, filed December 31, 2001, is granted.
2. The David B. Popkin 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 December 17, 2001, is dismissed as moot with respect to Interrogatories DBP/USPS-30 and DBP/USPS-72 and -76[b]; granted with respect to DBP/USPS-9 and DBP/USPS-83, as provided in the body of this ruling; and denied with respect to DBP/USPS-67 and DBP/USPS-33(a).

  
George Omas  
Presiding Officer