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PRESIDING OFFICER'S
RULING NO. R2001-1/41

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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 MOTION TO COMPEL A RESPONSE TO
DBP/USPS-93, 96, 98(a), 100(b), 101, AND 121

(Issued January 29, 2002)

David B. Popkin, a limited participator in this proceeding, seeks to compel the Postal Service to respond to several interrogatories. The Postal Service objects, principally on the grounds that the information requested is irrelevant to issues in this docket.

Except in one relatively minor aspect, the motion is either denied or dismissed. The Commission welcomes the participation of individuals in its proceedings and values their contributions to the record. The outcome of this Ruling, however, suggests that Mr. Popkin should consider a more judicious use of motions practice as he seeks to develop issues for consideration by the Commission. Each interrogatory is considered seriatim below.

DBP/USPS-93. This multi-part interrogatory, which is styled as a follow-up to OCA/USPS-292, requests information concerning the time and frequency of mailbox collection schedules. For example, subparts (a)-(d) request a breakdown of mailbox collection times in smaller increments than provided in response to OCA/USPS-292. In addition, it requests the Postal Service to quantify, in percentage terms, the number of boxes not collected on Saturdays and to explain the reasons for that practice.¹

¹ See subparts (h) and (i). The remaining subparts, (e)-(g), which request similar information concerning weekday collections, are not in dispute. Mr. Popkin has accepted the Postal Service's explanation, set forth in its objection, as responsive. See David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-93, 101, 121, 98(b), 100(b), and 96, January 4, 2002, at 2 (Popkin Motion).

The Postal Service objects on three grounds: (a) that the interrogatory is not appropriate follow-up, (b) that the information requested is irrelevant, and (c) that it would be unduly burdensome to produce.² In his motion to compel, Mr. Popkin argues that responses to subparts (a)-(d) “are needed to fully evaluate the level of service that is being provided in collection boxes.” Popkin Motion at 2. As further justification, he contends that the breakdowns requested are designed to determine the Postal Service’s compliance with the provisions of the Postal Operations Manual (POM). *Ibid.* Turning to subparts (h) and (i), Mr. Popkin argues that these subparts are legitimate follow-up because they attempt to quantify the number of boxes represented by the responses. He is also skeptical of the Postal Service’s claims of burden, but indicates that he would accept data for a more limited period than initially requested. *Ibid.*

In its opposition, the Postal Service reiterates and expands on its objection.³ The Postal Service argues that collection boxes are relevant solely for purposes of value of service comparisons between subclasses that benefit from the collection network and those that do not. *Id.* at 1. It contends that the operational details requested are neither relevant nor material to issues in this proceeding. *Id.* at 1-2. Illustratively, citing subpart (b), which requests information about weekday collections between 4 and 5 p.m., the Postal Service argues that whatever the data might reveal the results “would have no bearing” on appropriate rates and fees in this proceeding. *Id.* at 2. The Postal Service also asserts that Mr. Popkin’s rationale for wanting the information, *e.g.*, compliance with POM provisions, fails to establish its relevance. *Id.* at 3-4. Further, the Postal Service contends that his reliance on the POM for justification demonstrates that it is not an appropriate follow-up because, unlike OCA/USPS-292, which sought to measure collection schedules over time, Mr. Popkin’s request concerns compliance with POM provisions. *Id.* at 4. Finally, the Postal Service argues that

² Objection of the United States Postal Service to Popkin Interrogatory DBP/USPS-93, December 27, 2001 (December 27 Objection).

³ 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, at 1-5 (Postal Service Opposition).

responding would be burdensome notwithstanding Mr. Popkin's willingness to pare his request. *Id.* at 4-5.

Discussion. Mr. Popkin's request must be judged against the data already provided. Hourly collection data were provided by the Postal Service. Mr. Popkin seeks a more detailed breakdown, which he argues is needed to evaluate collection box service levels and compliance with POM provisions. Neither rationale, however, is convincing. Plainly, the latter is not relevant to the Commission's deliberations. Whether the Postal Service is in compliance with POM provisions has no effect on the Commission's recommendations, even if the consequences of any variance may be considered. Moreover, while Mr. Popkin's professed desire to "evaluate the level of service that is being provide in collection boxes" may have some superficial appeal, he failed to adequately demonstrate that the data sought have a material bearing on issues before the Commission. While the data might shed some light on collection practices, that alone is insufficient, under the circumstances, to require the Postal Service to respond. Ultimately, Mr. Popkin's rationale is unconvincing because he never successfully demonstrates a sufficient nexus with issues before the Commission. Accordingly, the motion is denied as to subparts (a)-(d).⁴

Subparts (e)-(g) and (h) and (i) concern collection boxes scheduled for weekday and weekend pickup, respectively. In its objection to responding to subparts (e)-(g), the Postal Service indicates that through the CBMS database it could estimate the percentage of collection boxes scheduled and not scheduled for weekday pickup. December 27 Objection at 2-3. Beyond that, however, the Postal Service states that information is not available or would be unduly burdensome to obtain. *Id.* at 3. As Mr. Popkin notes, the Postal Service did not specifically object to subparts (h) and (i). Popkin Motion at 2. The Postal Service makes only a passing reference to those subparts in its opposition. See Postal Service Opposition at 2, n.1. From the pleadings, it is unclear whether the reasons supporting its objection to subparts (e)-(g)

⁴ In light of this finding, there is no need to address the substance of the Postal Service's remaining objections.

likewise apply to subparts (h) and (i).⁵ To the extent it can without undue burden, the Postal Service should provide the percent of total boxes that are not scheduled for collection on Saturdays. For purposes of responding, it will be satisfactory to provide information similar to that provided with respect to subparts (e)-(g).

DBP/USPS-96. This interrogatory is predicated on the Postal Service's response to OCA/USPS-299, which requested the Postal Service to describe the process by which it ensures that POS-ONE terminals "contain accurate information about Express Mail delivery times." In addition to outlining that process, the Postal Service references two additional responses that address POS-ONE terminals.⁶

DBP/USPS-96 asks the Postal Service whether there are any other forms of delivery for Express Mail other than post office boxes and street delivery. The Postal Service objects on the grounds that it is not a legitimate follow-up and, therefore, untimely.⁷ Mr. Popkin moves to compel. He acknowledges that the topics of the two interrogatories are dissimilar, but contends that his interrogatory "attempt[s] to clarify the response."⁸

After summarizing the substance of its response to DBP/USPS-299, the Postal Service argues that DBP/USPS-96 is too attenuated to be considered follow-up. Postal Service Opposition at 10-11. Further, the Postal Service suggests that Mr. Popkin likely already knows the answer. *Ibid.*

Discussion. While it may have been more expedient for the Postal Service simply to answer the question, its objection is nonetheless sustained. The procedural schedule afforded participants ample time for discovery from the Postal Service. Failure to serve data requests in timely fashion cannot be circumvented under the guise of follow-up. The Postal Service responded to numerous requests for data concerning

⁵ The last line of its objection refers only to subparts (a) through (g). December 27 Objection at 3

⁶ The responses referenced are DFC/USPS-9 (answered October 11, 2001) and OCA/USPS-T30-1 (answered October 15, 2001).

⁷ Objection of the United States Postal Service to David B. Popkin Interrogatories DBP/USPS-94 and 96, January 3, 2002 at 1-2.

⁸ Popkin Motion at 4.

Express Mail, including many from Mr. Popkin, some of which concern the delivery of Express Mail. See, e.g., Response of United States Postal Service to Interrogatories of David B. Popkin DBP/USPS-15 and 17, December 10, 2001, and DBP/USPS-16, December 17, 2001. Perhaps one of these could have triggered the instant request, either independently within the established schedule or as legitimate follow-up. Mr. Popkin, too, recognizes that the two interrogatories entail different topics, which, given the Postal Service's specific objection, renders his motion somewhat problematic. This is not to suggest, however, that he was without recourse. Written discovery must end at some point. Had Mr. Popkin wished to pursue the issue, he could have sought to cross-examine the appropriate Postal Service witness. Accordingly, the motion is denied.

DBP/USPS-98(b). This interrogatory is a follow-up DBP/USPS-71, which, among other things, sought the wording to be utilized in the Domestic Mail Manual (DMM) regarding Express Mail refunds. The Postal Service replied to that interrogatory, indicating that the provision had not yet been drafted.⁹ In DBP/USPS-98(b), Mr. Popkin requests a draft of the proposed DMM language. The Postal Service objects on the grounds of deliberative process privilege, but undertakes to file a partial response "indicating its intent regarding the proposed rule."¹⁰ On January 9, 2002, the Postal Service filed a revised response to DBP/USPS-98(b).¹¹

Mr. Popkin moves to compel, asserting that the proposed DMCS change is "overly broad and restrictive" and that the DMM language is necessary to fully evaluate the proposed DMCS change. Popkin Motion at 3. In its Opposition, the Postal Service

⁹ Response of the United States Postal Service to Interrogatories of David B. Popkin, DBP/USPS-71, December 10, 2001.

¹⁰ United States Postal Service Objection to Interrogatories DBP/USPS-98(b) and 100(b), December 31, 2001 at 1. The Postal Service filed a Motion for Late Acceptance of Objection of United States Postal Service to Interrogatories DBP/USPS-98(b) and 100(b), December 31, 2001. The motion for late acceptance is granted.

¹¹ Revised Response of United States Postal Service to Interrogatory DBP/USPS-98(b), January 9, 2002.

indicates that it will update its earlier response “once draft DMM language is finalized[,]” thereby rendering the issue “arguably moot.” Postal Service Opposition at 9.

Discussion. Timing plays a role in this discovery dispute. The chronology is as follows: The Postal Service’s objection, which noted that a partial response would be submitted, was filed December 31, 2001; Mr. Popkin’s motion followed on January 4, 2002; the Postal Service filed its revised response to DBP/USPS-98(b) January 9, 2002; and it filed its opposition to the motion January 11, 2002.

Notwithstanding the Postal Service’s objection, to some degree Mr. Popkin’s motion, which makes no mention of the Postal Service’s undertaking to file a partial response, was premature, a point that is further underscored by the Postal Service’s subsequent agreement to file an updated response. In light of this activity subsequent to his filing the motion, it would not have been inappropriate for Mr. Popkin to withdraw the motion pending receipt of the responses. In any event, the Postal Service claim that the dispute is “arguably moot” is well taken. Hence, the motion to compel is dismissed concerning DBP/USPS-98(b), provided the Postal Service files a response as indicated.

DBP/USPS-100(b). This interrogatory, which is also a follow-up to the Postal Service’s response to DBP/USPS-71, asks whether the proposed amendments to the DMCS concerning Express Mail refunds were determined before or after September 11, 2001. The Postal Service objects, arguing that when its decision was made is irrelevant.¹² Mr. Popkin contends that the date of the Postal Service’s decision is relevant because, in his view, the proposed DMCS language is overreaching and the extent to which the determination was made prior to September 11, 2001 “will be relevant to [his] full evaluation and briefing of the proposed change.” Popkin Motion at 3. In its opposition, the Postal Service echoes its objection that the date is irrelevant. Postal Service Opposition at 9. In addition, it notes that the change is to be prospective. *Ibid.*

¹² United States Postal Service Objection to Interrogatories DBP/USPS-98(b) and 100(b), December 31, 2001 at 2.

Discussion. The proposed DMCS language will be judged on its merits, regardless whether the Postal Service made its determination before or after September 11. Whatever Mr. Popkin's interpretation of the proposed language may be, he has not demonstrated that the date is in any way relevant to the merits of the proposal. Accordingly, the motion is denied.

DBP/USPS-101. In response to DBP/USPS-73(b), the Postal Service indicated that each office has its own policy for holding out Priority Mail to "nearby" locations, and that such mail would not move via Federal Express (FedEx). As a follow-up to this response, DBP/USPS-101 asks the Postal Service to provide "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[.]"

The Postal Service objects on two grounds. First, the Postal Service contends that the information is irrelevant since, assuming the inquiry concerns transportation costs, FedEx network costs are treated as non-distance related.¹³ Second, the Postal Service argues that the operational details of what mail is processed at FedEx's Memphis Hub "is not materially related to the issues in this proceeding." *Ibid.*

In support of his motion to compel, Mr. Popkin, while acknowledging that the current FedEx transportation agreement does not include a mileage component for FedEx services, speculates that FedEx's rates under future agreements will increase based on current transportation practices. Popkin Motion at 3. In addition, he asserts that if others, including the Presiding Officer, "felt it was relevant to ask questions" about use of the Memphis Hub, "a response to this interrogatory is equally relevant." *Ibid.*

Oposing the motion, the Postal Service repeats its objection and dismisses Mr. Popkin's concerns about the future as irrelevant to issues in this proceeding. Postal Service Opposition at 5. In addition, the Postal Service distinguishes its responses to

¹³ Objection of United States Postal Service to Interrogatory of David B. Popkin—DBP/USPS-101, December 27, 2001.

limited inquiries concerning FedEx operations with Mr. Popkin's open-ended request. *Id.* at 5-6.

Discussion. Mr. Popkin's quest for information about the transportation practices involving FedEx's Memphis Hub extends beyond DBP/USPS-101. In DBP/USPS-83, as modified, he sought essentially the same information, albeit considerably more limited.¹⁴ The Postal Service's compelled response to DBP/USPS-83 indicates that "[t]he normal routing of Priority Mail within zone 3 would be a surface, typically highway routing."¹⁵ Given this response, and further because the merits of the instant discovery dispute are sufficiently analogous to those involving DBP/USPS-83, (see P. O. Ruling 2001-1/32 at 6-9), the motion will be dismissed as cumulative.

DBP/USPS-121. This interrogatory, a follow-up to the Postal Service's response to DBP/USPS-73(a), requests information about the relative proportion of mail handled at FedEx Hubs, various routing information, and whether the hubs serve as backup for one another. The Postal Service objects, arguing that the information is irrelevant, not germane to issue in this proceeding, and commercially sensitive.¹⁶ In support of his motion, Mr. Popkin incorporates his arguments concerning DBP/USPS-101. Popkin Motion at 3. In addition, he argues that commercially sensitive information can be submitted under protective conditions. Further, he observes that the Postal Service has previously provided information concerning FedEx hub operations. *Ibid.*¹⁷

Discussion. Mr. Popkin offers two reasons in support of his motion: (a) that rates for any future FedEx transportation agreement will be increased as a result of current practices, and (b) that the Postal Service provided certain handling data in

¹⁴ See David B. Popkin Motion to Compel Responses to Interrogatories [Both Those that Have Been Objected to as Well as Those that Have Not Been Fully Responded to], December 17, 2001 at 4.

¹⁵ Response of United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-83), January 18, 2002.

¹⁶ Objection of United States Postal Service to Interrogatory of David B. Popkin—DBP/USPS-121, December 31, 2001.

¹⁷ The Postal Service's response to the motion reiterates its objection, and, given Mr. Popkin's reliance on his arguments concerning DBP/USPS-101, incorporates its rebuttal as well. Postal Service Opposition at 7-9.


response to a POIR. Neither of these arguments is persuasive. Mr. Popkin's speculation about the Postal Service's future arrangements with FedEx is irrelevant to issues in this docket. Moreover, merely because the Postal Service provided certain, largely illustrative information concerning transportation practices does not provide carte blanche for any inquiry that may involve a related topic in a more encompassing manner. For these reasons, the motion is denied.¹⁸

Suspension of Ruling. A revised Stipulation and Agreement (Settlement), that would effectively resolve all issues in this docket, was filed January 17, 2002. The Settlement is supported or not opposed by a majority of the participants, including Mr. Popkin, who does not oppose it. Under these circumstances, there would appear to be no need for the Postal Service to provide the response ordered herein at this time. Accordingly, the effectiveness of this Ruling is suspended, provided the Settlement remains pending before the Commission for a recommended decision. If support for the Settlement is withdrawn so that it no longer represents a reasonable basis on which to resolve issues in this proceeding, or if the Postal Service withdraws from it, the Postal Service shall promptly advise the Commission and, within ten days thereafter, provide its response as directed by this Ruling.

¹⁸ This outcome should not be read to imply that operational matters do not have rate or classification implications. See P.O. Ruling R2001-1/32 at 6-8. Under the circumstances presented, however, production of the information requested is not justified.

RULING

1. David B. Popkin's Motion to Compel Response to Interrogatories DBP/USPS-93, 101, 121, 98(b), 100(b), and 96, filed January 4, 2002, is resolved as set forth in the foregoing Ruling.
2. As discussed above, this Ruling requiring the Postal Service to respond to an interrogatory is suspended, provided the Settlement remains pending before the Commission for a recommended decision.
3. The Motion for Late Acceptance of Objection of United States Postal Service to Interrogatories DBP/USPS-98(b) and 100(b), filed December 31, 2001, is granted.


George Omas
Presiding Officer