

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OBJECTION OF UNITED STATES POSTAL SERVICE TO INTERROGATORIES
OF DAVID B. POPKIN DIRECTED TO THE UNITED STATES POSTAL SERVICE
(DBP/USPS-1-4, 15, 20(B-C), 21(M-P, R, V, Y-AA, CC),
28(A-B), 33(F-L), 50(A-B), AND 53(T, X-Y))
(September 25, 1997)

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the Postal Service hereby objects to interrogatories DBP/USPS-1-4, 15, 20(b-c), 21(m-p, r, v, y-aa, and cc), 28(a-b), 33(f-l), 50(a-b), and 53(t, x-y), directed to the Postal Service and filed on September 10, 1997.¹

Interrogatory DBP/USPS-1 requests "a more comprehensive description of each of the presently filed library references and those in the future that will allow an intervenor to adequately determine the content and significance of the reference." The Postal Service objects because this interrogatory is overbroad and burdensome. The Postal Service believes it has provided, and will continue to provide, the informative titles for each of its library references required by Special Rule 5. Mr. Popkin requests more information on each of the approximately 280 library references, which would take about 23 hours assuming only 5 minutes per library reference, even though available information may already indicate that many of these library references are not of interest to Mr. Popkin.

¹ Presiding Officer's Ruling No. R97-1/21 established September 25, 1997 as the due date for filing objections to this and other interrogatories that were filed by Mr. Popkin on September 10, 1997.

Interrogatory DBP/USPS-2 requests a comprehensive description of the workpapers filed by the various witnesses. This interrogatory is overbroad, burdensome in relation to the value of a response, and asks for information that is already available. A witness's testimony often indicates what workpapers are available, and electronic versions of the workpapers are generally available from the Commission's internet site (www.prc.gov). More information might also be available by calling the Commission's docket section or the Postal Service's library, which have copies of all the workpapers. Mr. Popkin has failed to specify which workpapers he needs more information about, or what additional information he needs.

The Postal Service objects to interrogatory DBP/USPS-3, because it lacks relevance to any issue in this proceeding. Instead, it refers to requests by Mr. Popkin for, in effect, a legal opinion or ruling concerning his interpretation and characterization of correspondence with the Postal Service that arose out of an earlier Commission proceeding. As background, Mr. Popkin was an active intervenor in Docket No. MC96-3 (Special Services), which in part concerned post office box service. Having read about a post office box awareness campaign in the *Postal Bulletin*, Mr. Popkin requested materials related to the campaign by directly phoning the Postal Service's witness in the case, John Landwehr. After several such phone calls, Mr. Popkin, at witness Landwehr's request, contacted Postal Service attorneys, who informed Mr. Popkin that the material he was interested in had been filed as a library reference. The Postal Service then sent a courtesy copy of the library reference to Mr. Popkin.

The cover letter accompanying the library reference advised Mr. Popkin of the practice concerning contacts between parties and the Postal Service, in rate and classification litigation, that has been observed consistently over many years both by parties represented by counsel and by individual intervenors in Commission proceedings.² For a variety of reasons, the Postal Service has concluded that the efficiency, fairness, and orderly conduct of the litigation, among other things, are best served when parties deal with the Postal Service through its appointed counsel on matters pertaining to the pending cases. Mr. Popkin's reaction was a responsive letter, which apparently expanded the Postal Service's cover letter to constitute a general statement concerning his relationship with the Postal Service as a public institution. The Postal Service does not believe that this conclusion is in any way supported by the context in which this matter arose, by the Postal Service's response, or by Mr. Popkin's then or subsequent conduct. Mr. Popkin has subsequently repeatedly sent copies of the same letter to the Postal Service that, in effect, accuses its attorneys of depriving Mr. Popkin of some unspecified "rights" to communicate with the Postal Service. Because it believes, to the contrary, that the meaning of its original statement was clear, and that, in the context in which it arose, it was clearly understood by Mr. Popkin, the Postal Service has declined to provide Mr. Popkin with a legal opinion that would, in effect, acknowledge the validity of his

² During the same time period, Postal Service attorneys became aware that Mr. Popkin, without informing Postal Service counsel, had sent letters to Postal Service district managers requesting them to complete a time-consuming survey related to another issue in Docket No. MC96-3, the handling of return receipts.

mistaken premise. Nevertheless, Postal Service attorneys have subsequently had innumerable cordial dealings with Mr. Popkin on a variety of matters related to rate and classification litigation, and have been otherwise responsive to his many requests and inquiries. The questions in interrogatory DBP/USPS-3, however, are beyond the scope of this proceeding.

Interrogatory DBP/USPS-4 asks questions about the Postal Service's policies concerning reproductions of stamps. These questions lack material relevance to the issues in this proceeding. This proceeding should not be expanded to include any customer concerns about the Postal Service's practices. These questions are also burdensome because they involve issues which do not typically arise in rate cases. Knowledgeable individuals need to be located before a response could be formulated.

Interrogatory DBP/USPS-15 asks the Postal Service to confirm six items of information concerning stamped cards. The requested information is readily available from the Postal Service's Request and testimony in this docket. The interrogatory apparently seeks to consolidate available information on one page. That job can be done by Mr. Popkin in his own testimony or brief. Since the interrogatory is not designed to discover new information from the Postal Service, the interrogatory is not "reasonably calculated to lead to the discovery of admissible evidence."³

³ In other circumstances the Postal Service is willing to respond to interrogatories that seek confirmation of what the Postal Service's request, testimony, or manuals state, when such confirmations are necessary to other parts of the interrogatory. In the context of Mr. Popkin's voluminous interrogatory set, consisting of at least 800 parts, the Postal Service believes that many of the requests for confirmation are objectionable. While in this case responding to the interrogatories is not unduly

(continued...)

Interrogatory DBP/USPS-20 asks about Postal Electronic Commerce Services. The Postal Service objects to parts b and c, which concern whether these services will be under the jurisdiction of the Postal Rate Commission, and if not, legal references to explain why not. These parts ask for legal conclusions, rather than discoverable facts. Special Rule of Practice 5 in this docket states that:

[a]rgument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda.

Presiding Officer's Ruling No. R97-1/4. As Special Rule 5 makes clear, legal issues are best left to briefs, rather than the discovery process. Under rules 25 and 26, interrogatories must appear to be "reasonably calculated to lead to the discovery of admissible evidence." These interrogatories fail to meet that standard.

Interrogatory DBP/USPS-21, parts (m)-(p), (r), (v), (y)-(aa), and (cc), ask for confirmations comparing various rates and fees already provided in the Postal Service's proposed rate and fee schedules. Since the comparisons can be made as easily by Mr. Popkin as by the Postal Service, the Postal Service should not be required to respond.

The Postal Service objects to interrogatory DBP/USPS-28, part (a-b), because they ask for confirmation of what the Postal Operations Manual says. This manual speaks for itself. These parts are not designed to discover new information from the

³ (...continued)

burdensome, the hope is that Mr. Popkin will use these objections to identify interrogatories that could be withdrawn. At least, Mr. Popkin might identify ways to shorten his discovery requests in the future.

Postal Service, and thus are not “reasonably calculated to lead to the discovery of admissible evidence.”

Interrogatory DBP/USPS-33, parts (f-l), repeats a line of questioning that Mr. Popkin asked in Dockets No. R87-1, R90-1, and MC96-3, concerning the red validating stamp that was once used in conjunction with return receipt service. The Postal Service has no new information on this issue, and would likely just refer to its old responses were it to provide an answer. The Postal Service objects because such repetitive questioning is cumulative, harassing, and not “reasonably calculated to lead to the discovery of admissible evidence.” Discovery in Commission proceedings should seek to obtain new information from the Postal Service, not be a forum for criticizing old Postal Service operational decisions.

Interrogatory DBP/USPS-50, parts (a) and (b), ask for confirmation of the proposed delivery confirmation and certificate of mailing fees. These fees are already presented in the Postal Service’s rate and fee schedules, attached to its Request. Responses will not add to the record.

Interrogatory DBP/USPS-53, parts (t), (x), and (y), ask for confirmation of information that is readily available in the Postal Service’s rate and fee schedules, attached to its Request. Mr. Popkin is able to make the requested comparisons and

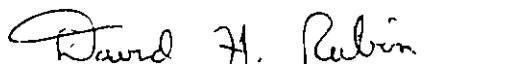
calculations as well as the Postal Service, so the Postal Service should not be required to respond.

Respectfully submitted,

UNITED STATES POSTAL SERVICE


By its attorneys:

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David H. Rubin

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.


David H. Rubin

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