

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

EXPERIMENTAL PRIORITY MAIL FLAT-RATE
BOX, 2004

Docket No. MC2004-2

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO PROCEDURAL REQUEST OF DAVID B. POPKIN
(July 16, 2004)

On June 21, 2004, David B. Popkin filed interrogatories DBP/USPS-T2-13 and 19 requesting graphics and text for the proposed flat rate boxes, and a communications plan for the boxes. On July 1, 2004, the Postal Service filed an objection to both interrogatories. On July 9, 2004, David B. Popkin filed a motion to compel responses.¹ Contemporaneously with the filing of the motion to compel, however, Mr. Popkin also filed a short document styled as "Procedural Request of David B. Popkin." In this document, Mr. Popkin requests that "intervenors be provided one week after the Postal Service provides graphics and text for the proposed flat-rate boxes and the communications plan for the same proposed flat rate boxes to allow for discovery on that information." Procedural Request at 1. In the event that this request is construed as a motion requiring a response under the Commission's procedural rules, the Postal Service wishes to register its opposition to the request.

If construed as a motion, the procedural request should be denied for

¹ The Postal Service today has separately filed an opposition to this motion to compel.

many reasons. At the outset, the request proceeds from unfounded and incorrect premises. First, it assumes that the Postal Service can, during this proceeding, produce final graphics and text, and a final communications plan, for the proposed flat-rate boxes at issue in this case. Second, it assumes that the Postal Service is required to produce such information in this docket. Both of these incorrect premises are addressed in the Postal Service's opposition to the motion to compel, filed separately today. As shown in that opposition, it would not be possible for the Postal Service to produce final graphics, text and a communications plan prior to the issuance of the Commission's decision in this proceeding, because, among other things, completion of these items is contingent on the issuance of the Commission's recommended decision. Furthermore, the development of specific box text and graphics, and the specifics of advertising and/or other information to be provided to the public, is not an appropriate subject for determination in this proceeding, and is more properly left to the managerial discretion of the Postal Service in the event that it implements any DMCS language recommended by the Commission and approved by the Governors.

Beyond erroneously prejudging these issues, the request should be denied as an untimely and counterproductive attempt to dictate a procedural schedule in this case. At the prehearing conference in this Docket, the parties were asked if additional time for discovery was needed. Only one party, the OCA, indicated a need for additional discovery, and suggested that an additional week (with opportunity for follow-up) would suffice. Mr. Popkin, like all other

parties, had an opportunity to be heard on such procedural issues at that time, when feedback was specifically requested by the Presiding Officer. Mr. Popkin's belated request not only is at odds with the feedback received at the hearing, which indicated that the prospects were good for a rapid resolution to this case, but would, if granted, indefinitely prolong the discovery period and undermine efforts now underway to bring this proceeding to an expeditious and harmonious conclusion.

In order to maintain the orderly progression of this litigation, the Postal Service urges the Commission to deny Mr. Popkin's request for a prolonged and indefinite discovery period, continue to monitor the progress of the case, and defer any other such scheduling issues until such time as the Commission deems it appropriate to seek further comments from all parties regarding the establishment of additional procedural milestones. Given that settlement discussions are ongoing, that no party has voiced opposition to the Postal Service's proposal, and that no party has requested a hearing, it would be counter-productive to grant procedural requests such as that now made by Mr. Popkin.

For the foregoing reasons, the Postal Service respectfully requests that the motion (if it be construed as such) be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Richard T. Cooper

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2993; Fax -5402

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.

Richard T. Cooper

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2993; Fax -5402
July 16, 2004