

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

EXPERIMENTAL PRIORITY MAIL FLAT-RATE
Box, 2004

Docket No. MC2004-2

OBJECTIONS OF THE UNITED STATES POSTAL SERVICE
TO INTERROGATORIES OF DAVID B. POPKIN, DBP/USPS-T2-32, -34
(August 26, 2004)

In accordance with Rule 26 of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby files this notice of its objections to the following interrogatories, filed on August 23, 2004: DBP/USPS-T2-32 and -34.

The interrogatories are as follows:

DBP/USPS-T2-32 Please refer to your response to OCA/USPS-T2-13 [*sic*]. The response indicated that the box design was not in final form. In particular, no language fulfilling the Postal Service obligation under Paragraph 9 of the Stipulation and Agreement filed August 10, 2004, was yet to be included because it is still a matter of active discussion, complicated by summer vacations. Please provide an updated design that includes a draft of the wording that fulfills this obligation. If no wording has reached the draft stage, provide any information on the proposed placement of the wording on the box, the color, type font, and font size that is available and provide the wording when it becomes available.

DBP/USPS-T2-34 Please refer to your response to OCA/USPS-T2-19 [*sic*]. Your response indicates in the draft communications plan that special messaging on the flat-rate box will include language advising customers that using the Flat Rate Box may not result in the lowest cost Priority Mail option. Please confirm that based on this proposed communications plan that the Postal Service will not be making any communications to their facilities or to mailers that the use of a flat-rate box may result in a higher postage rate than the use of a non-flat-rate box other than placing wording on the box itself and indicating in the communications plan that the boxes will contain this wording. If you are unable to confirm, please provide the draft wording that will be included in the communications plan to provide this information and the means of implementation.

These interrogatories constitute an attempt on the part of Mr. Popkin to re-open matters that have already been resolved definitively by Presiding Officer's Ruling No. MC2004-2/2. In that Ruling, the Presiding Officer found that draft copies of the boxes' graphics and text, as well as a draft communications plan, would contribute to the record in a meaningful way, stating that "to the extent that responsive materials exist or will be produced in the near future, their production would contribute to a more complete record in this proceeding."¹ The Ruling thus directed their production, and the Postal Service complied.² Similarly, Mr. Popkin's parallel request to extend discovery³ while he delves further into details of flat-rate box markings and the communications plan was denied.⁴

With respect to draft copies of the boxes' graphics and text, the Presiding Officer expressly found that the production of prototype boxes that the Service had previously offered to produce in its July 16, 2004 Opposition would satisfy its obligation.⁵ Therein, the Postal Service expressly noted that these prototypes might not contain text that was then being discussed in the settlement negotiations (which ultimately resulted in Paragraph 9 of the Stipulation and Agreement).⁶ By asking for such text in interrogatory DPB/USPS-T2-32, therefore, Mr. Popkin effectively repeats his request for matters on which the Presiding Officer, after briefing by Mr. Popkin and the Postal Service, has

¹ Presiding Officer's Ruling No. MC2004-2/2 (July 26, 2004), at 3.

² See Compelled Responses of United States Postal Service Witness Barrett to Interrogatories of David B. Popkin (August 19, 2004).

³ Procedural Request of David B. Popkin (July 9, 2004).

⁴ See Ruling No. MC2004-2 at 3-4.

⁵ *Id.*

⁶ See Opposition of the United States Postal Service to David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-T2-13 and 19 (July 16, 2004), at 4.

already ruled. Mr. Popkin could have, but did not, seek reconsideration of POR MC2004-2/2 or certification to the Commission itself (Rule 32). The Presiding Officer should not permit Mr. Popkin's attempt to negate a ruling with which he does not agree by, in effect, filing the underlying questions again.

The Ruling also required the Postal Service to submit any draft "communications plan"; in light of the Presiding Officer's interest in seeing such a plan, the Postal Service prepared and filed a draft plan.⁷ By now asking the Postal Service either to confirm elements of a final plan or to provide a further draft, however, Mr. Popkin is once again taking action that is inconsistent with the Ruling, which granted his motion to compel "only to the extent" of a version of the plan as it existed at the conclusion of settlement negotiations.⁸ Once again, Mr. Popkin is, in effect, repeating a request on which the Presiding Officer, after briefing by Mr. Popkin and the Postal Service, has already ruled rather than availing himself of the options provided in the Rules.

Mr. Popkin's concern, at one level, is well understood, perhaps even appreciated. The Postal Service has no interest in deceiving its customers, an interest that Mr. Popkin and other participants generally share. Since the proposed flat-rate box postage rates are not at the bottom of the existing zone- and weight-rated Priority Mail options, some items mailed using a flat-rate box option may prove to have been eligible for a lower rate, if repackaged—and weighed and rated—appropriately. Some customers will

⁷ See Compelled Responses of United States Postal Service Witness Barrett to Interrogatories of David B. Popkin (noting that the Service undertook the early development of a responsive draft in light of the Presiding Officer's decision).

⁸ See Ruling No. MC2004-2/2 at 3.

not care, because of the flat-rate box's added convenience, but customers like Mr. Popkin clearly will. The Postal Service has not yet settled on the language that fulfills the obligation reflected in Paragraph 9 of the Stipulation and Agreement; nor has it finalized its communication plan. But in the end, since the Postal Service shares Mr. Popkin's concern, it will be attended to properly.

Mr. Popkin's interrogatory DBP/USPS-T2-33, the third submitted by him on August 23, 2004, underscores the Postal Service's objections to interrogatories -32 and -34. Interrogatory 33 constitutes proper follow-up because it relates to information—specifically, the “No weight limit” marking—that became known for the first time by the filing of the underlying response. In contrast, the challenged interrogatories seek to rehash matters already briefed and ruled upon by the Presiding Officer.

Finally, as the Postal Service indicated when filing the compelled responses to DBP/USPS-T2-13 and 19, the prototype boxes and draft communications plan will likely not evolve further until after any favorable action by the Commission on the instant Request.⁹

⁹ See the cover sheet for Compelled Responses of United States Postal Service Witness Barrett to Interrogatories of David B. Popkin, DBPUSPS-T2-13, 19 (August 19, 2004).

For the foregoing reasons, the Postal Service objects to interrogatories DBP/USPS-T2-32 and -34.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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Kenneth N. Hollies

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.

Kenneth N. Hollies

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