

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON DC 20268-0001

Postal Rate Commission
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Postal Rate and Fee Changes]
Pursuant to Public Law 108-18]

DOCKET NO. R2005-1

DAVID B. POPKIN MOTION TO REQUEST RECONSIDERATION OF PRESIDING
OFFICER'S RULING NO. R2005-1/59 WITH RESPECT TO INTERROGATORY DBP/USPS-
198.

I move to request reconsideration of Presiding Officer's Ruling No. R2005-1/59 as it relates to receiving a response to Interrogatory DBP/USPS-198.

August 1, 2005

Respectfully submitted,

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R20051XXrecon198

On June 20, 2005, I submitted Interrogatory DBP/USPS-198. On July 7, 2005, I submitted an erratum to this interrogatory to correct the subsection lettering. The Postal Service's response to this Interrogatory was due on July 5, 2005. Since the Postal Service did not make a timely response to this as well as other interrogatories, on July 12, 2005, I filed a Motion to Compel a response to DBP/USPS-198. On July 14, 2005, the Postal Service filed an Objection to providing a response to DBP/USPS-198 [along with a motion for late acceptance since the Objection had to be filed by June 30, 2005.] Based on the Commission's Rules, I had 14 days to file a Motion to Compel in response to the Postal Service's Objection. On July 27, 2005, I filed a timely Motion to Compel. The significant part of that Motion to Compel is as follows:

On July 14, 2005, the Postal Service filed an objection to that interrogatory on the basis that it seeks irrelevant data and does not constitute proper follow-up.

The interrogatory reads as follows:

DBP/USPS-198 Please refer to your response to DBP/USPS-41. [a] Does a postmaster have the discretion of providing post office box delivery service only five days a week [also less any holidays and/or days around a holiday that are not an official holiday such as Thanksgiving Friday]? [b] If so, what is the regulatory authority for providing less than six days a week delivery? [c] Please specify any conditions where customers having street delivery will receive mail on a day when a post office box customer will not have delivery

service. [d] If six days a week delivery service is required [other than official holidays] must the post office place incoming mail into the boxes? [d] If six days a week delivery service is required [other than official holidays] must the post office provide access to the post office box at a time after which Saturday's incoming mail has been placed into the post office box? [d] If six days a week delivery service is required [other than official holidays] must the post office make arrangements to allow for post office box customers to have the ability on Saturday to pick up accountable mail and articles that are too large for the box?

Interrogatory DBP/USPS-198 was filed to follow-up on Interrogatory DBP/USPS-41. Interrogatory DBP/USPS-41 was filed on April 29, 2005 and a response was due 14 days later on May 13, 2005. On May 17, 2005, I filed a Motion to Compel a response to a number of interrogatories including DBP/USPS-41. On May 24, 2005, the Postal Service filed an Opposition to that Motion to Compel and stated in footnote 1 that responses to interrogatory 41 was forthcoming. Presiding Officer's Ruling No. R2005-1/19 issued on June 7, 2005, granted my Motion to Compel a response to interrogatory DBP/USPS-41.

The Postal Service did not respond to interrogatory DBP/USPS-41 until June 17, 2005, some 49 days after it was filed and 35 days after a response was due under the Commission's Rules. Furthermore, the response was made ten days after the Presiding Officer's Ruling or three days after the time imposed by Commission's Rule 26[e].

Unfortunately, it appears that there is no real incentive for the Postal Service to respond to interrogatories in a timely manner. In effect, it appears that there is an incentive for the Postal Service to file their responses late as a litigation strategy. About a week or so ago, I did a quick evaluation of my interrogatories and found that at that point in time approximately 30% of them had not been responded to on time. The only problem is that as a participant in this Docket, it appears that I have the option to either receive a response on time or to receive it late. Not allowing the Postal Service to file a late response is obviously not the solution. If the "shoe was on the other foot" and I was the one requesting to file a late document, the Postal Service could object and keep me from filing a particular document to my detriment.

Participants who have interrogatories to file may file on any relevant topic so long as it is prior to the cutoff date. Once the cutoff date has passed, participants are limited by Commission Rule 26[a] to those interrogatories that follow-up to clarify or elaborate on the answer to a previous interrogatory. The apparent problem arises on those follow-ups that a reasonable person would agree were "triggered" by the original response but which the Postal Service might claim was not a logical next step in consideration of the issue.

Unfortunately, because of the extremely late filing of the original response to interrogatory DBP/USPS-41, DBP/USPS-198 must be considered under the rules for follow-up interrogatories. Had they filed the response on time, or even "less late" than they did, it would have been possible to file the interrogatory without consideration of the follow-up rules.

The response to DBP/USPS-41 indicated that the local postmaster had the discretion, when no one was on duty, to allow access to post office lobbies for access to Post Office boxes and self-service equipment. The allowance of a local postmaster to have the discretion to not provide access to a post office lobby on a Saturday leads to the necessity to clarify and elaborate on that response to determine how the exercising of that discretion would relate to the provision of post office box service only five days a week rather than what appears to be the country-wide norm of six days a week. This is certainly a most logical step in consideration of the issue.

The requested information is far from irrelevant to this Docket. Whether Post Office Box holders have 5-day a week mail delivery or 6-day a week mail delivery is very relevant to the value of mail service in general and to the value of Post Office box service in particular. The comparison between providing 6-day a week street delivery at a local post office but not to a Post Office box at the same facility is also relevant to the value of service.

Since the Presiding Officer's Ruling makes no mention of my July 27, 2005, Motion to Compel, it would appear that the Commission only considered my July 12, 2005, Motion to Compel. That Motion only related the failure of the Postal Service to make a timely response to the original interrogatory and did not relate to the Postal Service's objection. As such, I was deprived of my due process right to provide a response to the Postal Service's Objection dated July 14, 2005, and to have it considered by the Presiding Officer prior to issue the Ruling¹.

As such, I move for reconsideration of the Ruling.

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 B. Popkin August 1, 2005

¹ Furthermore, it would also appear that the Postal Service has the right to respond to my July 27, 2005, Motion to Compel.