

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

POSTAL RATE AND FEE CHANGES  
PURSUANT TO PUBLIC LAW 108-18

Docket No. R2005-1

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO POPKIN'S  
SECOND MOTION TO COMPEL RESPONSE TO  
INTERROGATORY DBP/USPS-198  
(August 16, 2005)

On August 10, 2005, the Commission granted Mr. Popkin's motion for reconsideration of the Commission's ruling on interrogatory DBP/USPS-198.<sup>1</sup> At that time, the Commission stated that any response by the Postal Service to Mr. Popkin's motion to compel a response to DBP/USPS-198 shall be filed by August 15, 2005.<sup>2</sup> The Postal Service hereby responds.<sup>3</sup>

In his July 27, 2005 Motion to Compel, Mr. Popkin makes three claims: first, that the Postal Service has a "litigation strategy" of filing late responses; second, that DBP/USPS-198 would have been a non-objectionable question had it not been subject to follow-up rules; and third, that DBP/USPS-198 is proper follow-up to DBP/USPS-41. Each claim is addressed below.

First, the Postal Service does not have a litigation strategy of filing late responses. The Postal Service makes every reasonable effort – and often many

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<sup>1</sup> Presiding Officer's Ruling No. R2005-1/69.

<sup>2</sup> David B. Popkin Motion to Compel Response to Interrogatories of DBP/USPS-198, 241 to 243, 264, and 274, July 27, 2008.

<sup>3</sup> Unfortunately, technical difficulties prevented the response from being filed by 4:30pm on August 15, 2005. Motion Of The United States Postal Service For Late Acceptance Of The Response Of The United States Postal Service To Popkin's Second Motion To Compel Response To Interrogatory DBP/USPS-198 (August 16, 2005).

extraordinary ones – to file timely responses to the thousands of interrogatories directed to it in each omnibus rate case. However, the Postal Service’s resources are not unlimited. Interrogatories that are directed to the testimony of a specific witness (and which pertain to that witness’ testimony) are most likely to be responded to in a timely manner because no time is lost in identifying a source of responsive information and much less consultation is necessary in order to determine whether to object, or if not, how to respond. Interrogatories that are not directed to a specific witness, however, must often be circulated among various departmental contacts in order to identify the various stakeholders, and determine whether they wish to object and what type of responsive information they have. Consultations among these various stakeholders, most of whom are likely to not be focusing on this rate case, must be conducted before draft responses (in the forms of answers or objections) can be circulated and ultimately filed. The deadlines in the Commission’s Rules provide ample incentive for the swift completion of these matters and serve to push the Postal Service in that direction. However, the existing deadlines cannot always be met, due diligence notwithstanding. When interrogatories are less and less germane to the issues in a particular case, it is increasingly more difficult at times to identify all internal stakeholders and complete all consultations necessary to the preparation and filing of the Postal Service’s response. For these and other reasons, a response may be filed late, but the Postal Service never deliberately tries to delay a response as a litigation strategy. In fact, the Postal Service regrets any time that it has to delay submitting a response.

Mr. Popkin's second claim is that had the response for USPS/DBP-41 been filed "less late", DBP/USPS-198 would have been "triggered" by that response before the follow-up rules were in place, and thus would have been non-objectionable. The Postal Service regrets the delay in responding to DBP/USPS-41. However, it would not have mattered if DBP/USPS-198 had not come under the follow-up rules. No matter when DBP/USPS-198 were filed, it would have been objectionable, because it still seeks detailed information on a level that is irrelevant and immaterial to ratemaking. As stated in the Postal Service's objection<sup>4</sup>, the substance of DBP/USPS-198 is very similar to interrogatories to which the Postal Service has previously objected. A similar question was asked in the instant case as DBP/USPS-20, to which the Postal Service filed an objection on April 18, 2005. Yet another similar question was propounded as DBP/USPS-8 in R2001-1, and again as DBP/USPS-23 in R2000-1.

DBP/USPS-198 and its antecedent versions seek minutiae about delivery and retail services at post offices without Saturday window services. The standards governing the level of detail that may reasonably be requested are quite clear. In Docket No. R2000-1, the Presiding Officer denied Mr. Popkin's motion to compel a response to the first of these interrogatories, DBP/USPS-23, which sought details on Saturday service at post offices without retail window service on that day. See P.O. Ruling No. R2000-1/56. In that case, the Presiding Officer ruled:

The nature of these questions [DBP/USPS-22 and 23] and the level

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<sup>4</sup> Objection of the United States Postal Service to Interrogatory DBP/USPS-198, July 14, 2005.

of detail requested place these interrogatories outside the realm of appropriate discovery in this proceeding. Therefore, the Service will not be required to provide a response.

P.O. Ruling No. R2000-1/56 at 5-6.

In addition, the Presiding Officer's Ruling on DBP/USPS-19/R2000-1 (which was structurally similar to DBP/USPS-23 in that same docket, as noted by P.O. Ruling No. R2000-1/56 at 5-6) stated:

[M]atters of purely personal interest or concerning purely local conditions are often not relevant in an omnibus proceeding, and are therefore objectionable on that basis. Mr. Popkin has not shown sufficient nexus between the detail he requests, and the development of relevant evidence to warrant compelling answers.

P.O. Ruling No. R2000-1/56 at 5. The same relevance concerns identified by the Presiding Officer in Docket No. R2000-1 are equally applicable today with respect to DBP/USPS-198.

Mr. Popkin's final claim is that DBP/USPS-198 is a proper follow-up question to DBP/USPS-41. The Postal Service contends that DBP/USPS-198 does not constitute proper follow-up under Rule 26(a).<sup>5</sup> In interpreting follow-up discovery under Rule 26(a), the Presiding Officer has stated:

To decide whether interrogatories can reasonably be deemed follow-up, one must look at the original question and answer and then determine whether the new question is a logical next step in consideration of the issue.

See P.O. Ruling No. R90-1/56 at 2. In this interrogatory, Mr. Popkin inquires about a postmaster's discretion in providing post office box delivery service, referencing the Postal Service's response to DBP/USPS-41. However, the

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<sup>5</sup> This interrogatory was submitted on June 20, 2005, three days after the completion of discovery on the Postal Service's direct case, and thus it must satisfy the requirements of Rule 26(a) to be a valid follow-up interrogatory.

Postal Service's response to that interrogatory discussed a postmaster's discretion in restricting post office lobby access when no one is on duty, not the provision of post office box delivery service. DBP/USPS-198 does not aid in clarifying or understanding the underlying interrogatory about retail and lobby access, but instead opens up a new line of questioning about delivery. See P.O. Ruling No. R2001-1/40 at 4. Thus, it does not constitute a "logical next step" to DBP/USPS-41. Moreover, the question about post office box service in post offices without Saturday window services has previously been ruled upon by the Commission as outside the realm of appropriate discovery.<sup>6</sup>

Therefore, the Postal Service objects to DBP/USPS-198 because it is an improper follow-up interrogatory and it seeks irrelevant, detailed information.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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<sup>6</sup> Presiding Officer's Ruling No. 2000-1/56 at 6, discussing DBP/USPS-23 in R2000-1, which is similar in substance to DBP/USPS-198.