

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON DC 20268-0001

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POSTAL RATE AND FEE CHANGES, 1997

POSTAL RATE COMMISSION
DOCKET NO. R97-1
SECRETARY

MOTION TO COMPEL RESPONSES TO INTERROGATORIES SERVED ON THE
UNITED STATES POSTAL SERVICE AS WELL AS TO PERMIT A SINGLE
RESPONSE TO ALL ANSWERS

October 7, 1997

Respectfully submitted,



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1. On September 8, 1997, I mailed to the Postal Rate Commission a number of interrogatories for USPS response. On September 15, 1997 the Postal Service filed their Motion of the United States Postal Service for Leave to be Excused from Responding to Popkin Interrogatories DPB/USPS-1-68 [sic] ["Motion for Leave"]. At the time, I was out of town for a week and did not receive any communication from the Postal Service other than their normal service copy sent by First-Class Mail. On September 18, 1997 Presiding Officer's Ruling No. R97-1/21 ["Presiding Officer's Ruling"] denying the Motion for Leave and directing the Postal Service to object or respond to my interrogatories within seven and ten days. This was issued without any pleading on my part. It would appear to me that the only purpose for the Postal Service making their pleading was to "buy more time" to evaluate and respond to the interrogatories.

2. Based on the Presiding Officer's Ruling, objections to my interrogatories were due on September 25, 1997 and responses were due September 29, 1997. Many of the Postal Service pleadings were filed on time although they were sent in the normal manner and were received after the normal delivery standards. It is also noted that a number of their pleadings were served after the deadline imposed by the Presiding Officer's Ruling. On September 29th, an objection was filed to DBP/USPS-54 [bb in part, kk-tt]. On September 30th, responses were made to DBP/USPS-38 [m-q, s-aa].

There are still many interrogatories which remain unanswered. While the Postal Service appears to contact opposing counsel in an effort to resolve matters as well as faxing the pleading to them, the Postal Service did not contact me by telephone, did not contact me by fax, did not contact me by e-mail [the September 29th pleading was sent by Express Mail but, with only three pages, could have very easily been sent by fax or e-mail]. It would appear to me that the Postal Service is making an attempt to increase the cost of my participation and therefore reduce my level of participation. This pleading must be completed and copied in time to bring with me to the hearings in Washington.

3. In general, it appears that many of the Postal Service objections relate to four general items: 1. The information sought, while of interest to Mr. Popkin, appears to have only marginal relevance to the issues of this case. 2. The interrogatory is not reasonable calculated to lead to the production of admissible evidence. 3. To provide a response would impose an undue burden on the Postal Service. 4. Desire to confirm requests which are contained in various Docket material and Postal publications.

4. I will respond to all objections that I have received as of October 4th, 1997, in one pleading listing the interrogatories in numerical order.

5. The Presiding Officer's Ruling, in the final paragraph, indicates, in part, that, "..... the quality of service received by mailers is relevant," In items 1 and 2 of paragraph 3 above, the Postal Service admits that the interrogatories have a marginal relevance to the issues. A marginal relevance is still a relevance. Relevance is in the eye of the pleader. Most of my interrogatories which received these objections were related to quality of service. Since the Postal Service has based many of the rates on the value to the mailer, the quality of service is an important part of their request. A reduction in the quality of the service provided will obviously reduce the value of the service to a mailer and therefore, could result in lower rates. Information that I receive

in response to these interrogatories can certainly be used in preparation of any direct case I may put on as well as in the brief I may submit,

6. The Postal Service also complained that responding would be an undue burden. Rule 26[c] requires the Postal Service to state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required. This was not done and therefore, I, as well as the Commission, have no way of challenging their claim.

7. It appears to me that many of the objections relate to the desire of the Postal Service to file an objection to an interrogatory rather than making a simple "confirmed" response to the interrogatory. Over the years that I have participated in various Commission Dockets, I have observed that if I have an area that I wanted to pursue, I would have to break it up to a number of separate and distinct parts to obtain the meaningful response to my overall concerns. If I asked two or more questions in the same interrogatory subpart, the Postal Service on many occasions would inadvertently fail to respond to one or more questions. If I failed to obtain confirmations of the groundwork necessary to ask the desired question, I would get an unexplained response. Unfortunately, as an individual intervenor, I am trying to limit the costs of my participation. Some of the Postal Service's pleadings and their timing appear to me to be an effort to either cause me to make a new pleading or forgo my desire to obtain a meaningful response. My written interrogatories have been designed to obtain meaningful responses to my concerns without having to resort to oral cross-examination. It is only recently that I have participated in oral cross-examination of the Postal Service witnesses.

8. I will now address the specific objections which are not covered by my generalized response to the Postal Service's generalized objection.

DBP/USPS-1 and 2: The Postal Service seems to make the use of Library References and Workpapers in a manner which is not conducive to participation by out-of-town

intervenors, such as myself. To add five minutes to the preparation of a more meaningful explanation of the contents would certainly be a small part in the total preparation of the reference or workpaper. It seems to me that the Postal Service would just as soon have me make a trip down to Washington to check on a given item. The preparation of the reference explanation will save time on all participants in evaluating their need to examine it further.

DBP/USPS-3 Postal Service counsel fails to mention the full context of his January 3, 1997 letter to me. The contacts to John Landwehr were as a result of his name being shown as the Postal Bulletin contact for information. The January 3, 1997 letter states, in part, "I remind you that requests for materials related to Postal Rate Commission cases must be directed to the attorneys for the case, and not to witnesses **or other Postal Service employees or consultants.** [emphasis added]. If this practice exists, it certainly is over broad and would prohibit my contacting any Postal Service employee about anything that might even be remotely connected to the case. Footnote 2 indicates that I sent letters off to District Managers to inquire on the handling of return receipts within their District. What it fails to mention is that most of the letters did not receive a response other than many who stated they were forwarding the letters to Headquarters. If the attorneys were aware of these letters, why didn't they ensure that they were responded to as required. Footnote 3 of the Presiding Officer's Ruling relates to this interrogatory.

DBP/USPS-4 Obviously, the ability for mailers to utilize color reproductions of stamps will reduce the revenue being expected for any given service. The interrogatories are designed to determine the extent to which the Postal Service itself attempts to reduce the opportunity for diversion of expected revenue. Just because it involves an issue that does not typically arise in rate cases or would require the locating of a knowledgeable individual is no reason not to respond.

DBP/USPS-6-7 These interrogatories are all related to the service that is being provided. The response to subpart ee was "unknown" as to the percentage of First-Class Mail contains hand written addresses. I find it hard to believe that there is no

information regarding the percentage of hand addressed mail. This information should have been useful to evaluate various automation needs and processes.

DBP/USPS-8 subpart f - If it would clarify my request, change the word appropriateness to read difference. The difference in the words in the DMCS certainly is related to service. Subparts dd-ff are attempting to resolve the current level of service being provided for First-Class Mail with respect to the use of air transportation which was required for Air Mail when it existed as a separate service. At this time, the Postal Service is utilizing surface transportation when air transportation would expedite the delivery of the mail. This is a cost decision and I am attempting to investigate that.

DBP/USPS-9 These interrogatories are obviously related to the service commitments and performance goals for First-Class Mail.

DBP/USPS-10 - 12 These interrogatories are obviously related to the service commitments and performance goals for Express Mail. This is the premium service of the Postal Service and they should be required to show how it is at that level and therefore justify the price that they charge for it.

DBP/USPS-13 These questions are related to the rates for First-Class Mail. It is noted that I received two separate objections to subparts f and g. Once again, the use of a library reference to provide data needed by an intervenor is inappropriate. Do they really expect me to come down to Washington just to develop the data with respect to the rates?

DBP/USPS-14 This was answered by a witness in spite of the objection. This is the reaction to my efforts to correct what was an obvious error by the Postal Service.

DBP/USPS-15 I wish I could trust my evaluation of the various postal publications but it seems that I get responses from their witnesses that leave me undecided as to what is correct. If these are all easy to confirm, why are they wasting my time and the Commission's time by objecting rather than just confirming it.

DBP/USPS-16 The fact that the Postal Service calls a stamped card a philatelic product does not make it so. If a card meets the conditions of a stamped card then, even though it may be primarily designed to sell to stamp collectors, it is still a stamped card and subject to the Commission rates for them. The claim of what the Postal

Service claims is providing legal conclusions should not apply since these were institutional interrogatories. Subpart m is a clear question that asks if a 20-cent stamped card should be sold for 20-cents.

DBP/USPS-20 If the Postal Service feels that they will not be going to the Commission to recommend rates for this service, then it would appear that the only choice would be to file a complaint.

DBP/USPS-21 These interrogatories are related to rates and the pricing of special handling so that it will have very limited use.

DBP/USPS-28 Once again, an objection was filed rather than confirming two questions.

DBP/USPS-33 Subparts f through l relate to the use of the red validating stamp on return receipts. This obviously relates to the level and quality of service being provided. If a mailer is provided with a receipt which has a higher level of authenticity, then a greater quality and level of service will result.

DBP/USPS-39 The charts requested in subparts k and l are similar to the ones that the Postal Service provided in response to UPS/USPS-T33-11. I am sure that the Postal Service has these rates on a spreadsheet and would be able to generate them with minimal effort. To require me to enter all of this data into my own spreadsheet to make the calculations is unwarranted.

DBP/USPS-52 These relate to a comparison of two of the rates being proposed in this Docket and attempt to show that there is an inconsistency between them. Subpart l relates to an action by a knowledgeable mailer. This is attempting to show that the rates and mailing standards and conditions are inconsistent. A knowledgeable mailer is one that understands the regulations and service and makes logical decisions about which option is utilized.

DBP/USPS-53 Once again, an objection was filed rather than just simply confirming three questions.

DBP/USPS-54 Subpart bb relates to the charge of stamped envelopes. With respect to less than boxes of 500 of the precancelled envelopes, the price is established by the Commission even though many or most of the envelopes are purchased by stamp

collectors. Subparts kk through tt are related to the cost that the Postal Service charges for printed stamped envelopes which may only be obtained from one source by paying a fee that exceeds the value shown in the Fee Schedule. Why doesn't the Postal Service just show the prices that exist?

DBP/USPS-59 How is an intervenor able to obtain cost data in order to make a proposal in a rate case if that information is not provided by the Postal Service?

DBP/USPS-68 Since the rates for Special Handling will be raised considerably, this may result in a mailer no longer using this service and therefore losing the value for the Special Handling stamps that the mailer possesses. Footnote 2 relates to the comments that were made in the reform and the response was that I should file a complaint with the Commission. I am trying to avoid having to do that, however, it appears that this may be the only choice.

9. The Postal Service has failed to provide any response to the following interrogatories: DBP/USPS-6 subparts k, t, and u \ DBP/USPS-7 subparts l and m \ DBP/USPS-8 subparts e and j through p \ DBP/USPS-13 subparts i through l \ DBP/USPS-19 \ DBP/USPS-21 subparts a through l, q, s through u, w, x, bb, dd through jj \ DBP/USPS-29 subpart i6 \ DBP/USPS-33 subparts d and e, \ DBP/USPS-37 \ DBP/USPS-52 subparts a, m through p \ DBP/USPS-54 subparts a through aa, cc through jj, uu through ddd \ DBP/USPS-58 \ DBP/USPS-59 subparts h through l \ DBP/USPS-62 subparts a through g, l through s \ DBP/USPS-63 \ DBP/USPS-67.

10. As can be seen, the Postal Service has failed to reply to part or all of fifteen of my interrogatories. This does not appear to me to be an inadvertent omission. This appears to me to be an effort to make the information not available to me prior to the oral cross examination of the witnesses and also to increase my cost of participation by requiring added pleadings as they answer these interrogatories over an extended time period. Based on this, I would like to request the Postal Rate Commission reconsider its ruling which will allow me to file a single pleading which contains any motion to compel or any follow-up interrogatories to either the unanswered interrogatories as well

as any that the Commission may order the Postal Service to respond to in response to this Motion to Compel. The Postal Service should not be allowed to put me in the position of having to expend the added costs and effort just because of their failure to comply with the Presiding Officer's Ruling.

11. In their response to a number of interrogatories, the Postal Service refers to a number of Library References or Workpapers as well as previous cases. In my instructions to the interrogatories, I requested that I be furnished a copy of the reference so that I could have a meaningful response to my interrogatory. The following responses are involved: DBP/USPS-5 subpart a \ DBP/USPS-6 subpart b \ DBP/USPS-18 subpart a \ DBP/USPS-24 subpart l \ DBP/USPS-25 subpart e with respect to Certified Mail, subparts m through u \ DBP/USPS-27 subpart c \ DBP/USPS-35 subpart e \ DBP/USPS-39 subparts q through v \ DBP/USPS-48 subpart e \ DBP/USPS-53 subpart u \ DBP/USPS-64. The ability for the Postal Service to "hide" its full response behind a Library Reference or Workpaper, knowing that it is unlikely that the intervenor will find it reasonable to evaluate it, creates a cooling effect on the participation of those that are not in the Washington area. It should not be condoned and I move to compel them to provide copies.

12. With respect to the reply to DBP/USPS-25 subparts m to s, I am unable to believe that no postal employee is aware of the various cost elements for the three mail services. I move to compel a response.

13. With respect to the reply to DBP/USPS-28 subparts j through p, I move to compel a response to these questions. Subparts k and p request an explanation of negative responses. This was not provided.

14. With respect to the reply of DBP/USPS-41 subpart b, I move to compel a response to this question. Subpart b requests information that was not contained in the newspaper advertisement. This was not provided.

15. With respect to the reply of DBP/USPS-55 subpart j, I find it hard to believe the none of the some three-quarters of a million postal employees has the cost data for First-Class Mail and/or Standard Mail [A]. I move to compel a response.

16. With respect to the reply to DBP/USPS-66 subpart b, the response refers me to the testimony. My interrogatory asked how the prices for four specific types of envelopes was calculated. The testimony does not contain this information. I move to compel the witness to provide a responsive reply which will show how the price for these four types of envelopes can be developed with the data provided in the fee schedule. It appears to me that the data for pricing these four types do not appear in the fee schedule and therefore may not be considered in this Docket.

17. Based on the above, I move to compel the Postal Service provide the information that was originally requested and that I be permitted to file any Motion to Compel or Follow-up Interrogatories based on the actions of the Postal Service.

CERTIFICATE OF SERVICE

I hereby certify that I have this date 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 October 7, 1997

