

DOCKET SECTION

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OPPOSITION OF UNITED STATES POSTAL SERVICE TO
DAVID B. POPKIN'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES
SERVED ON THE UNITED STATES POSTAL AS WELL AS TO
PERMIT A SINGLE RESPONSE TO ALL ANSWERS
(DBP/USPS-1-4, 15, 20(B-C), 21(M-P, R, V, Y-AA, CC),
25(M-S), 28(A-B, J-P), 33(F-L), 53(T, X-Y), 54(BB, KK-TT), AND 68)
(October 14, 1997)

The United States Postal Service hereby opposes the October 7, 1997 motion of David B. Popkin to compel responses to interrogatories DBP/USPS-1-4, 15, 20(b-c), 21(m-p, r, v, y-aa, cc), 25(m-s), 28(a-b, j-p), 33(f-l), 53(t, x-y), 54(bb, kk-tt), and 68.¹ A response to Mr. Popkin's motion to compel with respect to DBP/USPS-6-14, 16, 20, 39, 41(b), 52, 55(j), and 59 involves objections by attorneys other than the undersigned, or responses filed by witnesses other than witnesses Needham and Plunkett, and will be addressed in separate documents.

Interrogatory DBP/USPS-1 requests "a more comprehensive description of each of the presently filed library references and those in the future that will allow an intervenor to adequately determine the content and significance of the reference." As explained in its objection, this interrogatory is overbroad and burdensome. Mr.

¹ In general, the Postal Service incorporates by reference the reasons stated in the Objection of United States Postal Service to Interrogatories of David B. Popkin Directed to the United States Postal Service (DBP/USPS-1-4, 15, 20(b-c), 21(m-p, r, v, y-aa, cc), 28(a-b), 33(f-l), 50(a-b), and 53(t, x-y), filed September 25, 1997 (Objection), and the Objection of United States Postal Service to Interrogatory of David B. Popkin Directed to the United States Postal Service (DBP/USPS-54(bb (In Part), kk-tt), and Motion for Late Acceptance, filed September 29, 1997 (Second Objection). This opposition provides further argument in response to Mr. Popkin's motion to compel.

Popkin has made no attempt to limit the burden of his request by identifying those few library references in which he might be interested and for which he needs more information, or explaining what type of additional information is needed.² The Postal Service believes that the informative library reference titles it already provides, in compliance with Special Rule 5, are adequate. Moreover, Mr. Popkin can inquire with Postal Service counsel about a particular library reference for which he wants more information, rather than imposing the burden on the Postal Service of providing unneeded information about all library references.

Interrogatory DBP/USPS-2 requests a comprehensive description of the workpapers filed by the various witnesses. Mr. Popkin has not explained why this request is not overbroad, burdensome in relation to the value of a response, and asking for information that is already available, as explained in the Postal Service's Objection.

With respect to interrogatory DBP/USPS-3, Mr. Popkin's Motion has not shown the relevance of the particular questions he asks. The Postal Service believes that Mr. Popkin's concerns have been addressed in its Objection, which explains its views on the Docket No. MC96–3 issue that the interrogatory concerns.

Interrogatory DBP/USPS-4 asks questions about the Postal Service's policies concerning reproductions of stamps. Just because, as Mr. Popkin alleges, this policy might have some impact on Postal Service revenues in general, does not give it material relevance to the issues in this proceeding. The scope of this proceeding needs to be limited to issues which have a possibility of affecting the Postal Service's rates, fees, and classifications. As the Presiding Officer stated, "[r]ate proceedings

² Contrary to Mr. Popkin's claim, Motion at 3, the Postal Service did state the burden involved in responding to this interrogatory with particularity, in compliance with Rule 26(c).

are not a forum for general oversight of Postal Service operating practices.”

Presiding Officer’s Ruling No. R97–1/21, at 4.

The only result interrogatory DBP/USPS-15 seeks is the confirmation of six items of information concerning stamped cards, with an explanation of any items that are not confirmed. The information is readily confirmable based on the Postal Service’s Request and testimony in this docket, and is not used as a foundation for further questions. The goal of the objection is to require Mr. Popkin to limit his questions as much as possible, not only in this instance, but in the future. Foundational facts or assumptions underlying relevant questions should be presented as statements, rather than interrogatories.

With respect to interrogatory DBP/USPS-20(b-c), Mr. Popkin has not addressed the Postal Service’s objection that the questions concern “legal questions, rather than questions of fact.” Presiding Officer’s Ruling No. R97–1/39, at 2.

With respect to interrogatory DBP/USPS-21(m-p, r, v, y-aa, cc), Mr. Popkin has not explained why the Postal Service should make the rate and fee comparisons to support Mr. Popkin’s argument, when these comparisons involve only simple arithmetic on the proposed rates and fees presented in the Postal Service’s Request. The Postal Service has answered the remaining parts of this interrogatory, and the absence of Postal Service responses to parts m-p, r, v, y-aa, and cc did not seem to be a hindrance to Mr. Popkin making his points on special handling during cross-examination of witness Needham. Tr. 3/693–706. In fact, it appears that Mr. Popkin has already made the requested comparisons. *Id.* at 704.

With respect to interrogatory DBP/USPS-25(m-s), witness Plunkett provided references to the detailed cost analyses already provided for certificates of mailing and return receipt for merchandise. With respect to certified mail, witness Needham

explained that no such analysis is available. While the data systems cost breakdown for certified mail appears in Exhibit USPS-15H, this breakdown does not provide the detail requested by Mr. Popkin. Mr. Popkin should not be allowed to compel the Postal Service to conduct the special study necessary to provide the detailed costing breakdown for certified mail that Mr. Popkin requests.

Concerning interrogatory DBP/USPS-28(a-b), Mr. Popkin's Motion does not explain why the Postal Service should confirm what Postal Operations Manual section 822.111 says. In responding to the other parts of this interrogatory, witness Plunkett has explained his understanding of that Postal Operations Manual section. Confirming parts a and b would not add anything to the record.

Mr. Popkin also moves to compel a response to interrogatory DBP/USPS-28, parts j through p. Witness Plunkett has already filed a response, stating that POM section 822.111 generally does not appear to require completion of a return receipt at the time of delivery. Thus, the request in parts k and p asking witness Plunkett to explain any instances in which completing the return receipt at the time of delivery is not required appears to require no answer, since, looking at POM section 822.111 only, completion at the time of delivery is not required in any instance. More significantly, Mr. Popkin has had a full opportunity to pursue this issue at witness Plunkett's hearing. Tr. 3/986–93, 1031–32. It is clear from the discussion at the hearing that witness Plunkett has no list of instances which he could provide in response to Mr. Popkin's interrogatory.

Concerning interrogatory DBP/USPS-33(f-l), Mr. Popkin's Motion does not explain why the same questions, that concern the historical decision to stop using the red validating stamp, and that have been answered in previous dockets, need to be answered again. As stated in its Objection, the Postal Service does not have any

new information on this issue, and would likely just refer to its old responses were it to provide an answer.

Interrogatory DBP/USPS-53, parts (t), (x), and (y), ask for confirmation of information that is readily available by applying arithmetic to the Postal Service's rate and fee schedules, attached to its Request. Mr. Popkin's Motion does not show how confirmations will add to the record, nor why the Postal Service should do the arithmetic rather than Mr. Popkin. In fact, the lack of responses to these parts did not appear to hinder Mr. Popkin from conducting oral cross-examination of witness Plunkett on related issues at the October 7 hearing. Tr. 3/979–984.

Interrogatory DBP/USPS-54, parts kk-tt, ask a series of questions apparently concerning the application of the Philatelic Fulfillment Service Center's shipping and handling charge to printed stamped envelope sales. Mr. Popkin's Motion does not show how this philatelic pricing issue is within the scope of this proceeding, or why the application of this charge, an issue that was resolved in Docket No. C95–1, should be relitigated in the current proceeding. Interrogatory DBP/USPS-54(bb) has been answered by witness Needham, with respect to nonphilatelic sales. Any different prices for philatelic sales is beyond the scope of witness Needham's testimony, and this proceeding. However, Mr. Popkin's Motion appears to indicate his knowledge that the price is the same for philatelic and non-philatelic sales.

While Mr. Popkin moves to compel a response to interrogatory DBP/USPS-66(b), it appears from his text that he means to refer to interrogatory DBP/USPS-66(a). With respect to interrogatory DBP/USPS-66(a), witness Needham's response assumed that Mr. Popkin was asking how the proposed fees were developed consistently with the statutory ratemaking criteria. However, apparently Mr. Popkin simply wishes to know what the proposed fees would be for four types of envelopes.

Witness Needham will shortly file a supplemental response to clarify the Postal Service's stamped envelope fee proposal. Therefore, for this interrogatory Mr. Popkin's motion should be declared moot.

Mr. Popkin also fails to overcome the Postal Service's relevance objection to interrogatory DBP/USPS-68. Subparts (a) through (p) of interrogatory 68 request confirmation that the Postal Service or its predecessor issued various types and categories of stamps, such as air-mail, special delivery, and parcel post stamps. Subpart q asks the Postal Service to identify the uses that may be made of each category of stamp issued by the Postal Service or its predecessor since 1860. Subparts (r) through (u) ask for information about the uses of special delivery stamps. As explained in the Postal Service objection to this interrogatory, filed on September 25, 1997, the information sought in interrogatory 68 is plainly immaterial to the issues before the Commission and would drastically expand the scope of this proceeding. The types and uses of stamps issued since 1860 would be of no utility in evaluating the Postal Service's rate and classification proposals in this docket.³ While this information may be of interest to philatelists or hobbyists, it simply has no bearing on the Commission's evaluation of the classification and pricing criteria of 39 U.S.C. §§ 3622 and 3623.⁴

³ Many of the issues raised in interrogatory 68 were squarely addressed by the Postal Service in response to comments received on its supplementary final rule on implementation standards for Special Services Reform. See 62 Fed. Reg. 31512, 31514 (June 10, 1997). The Postal Service further notes that the supplementary information published in connection with that rulemaking did not encourage Mr. Popkin, or any other person, to file a complaint with the Commission on this subject.

⁴ Mr. Popkin's inquiry regarding the use of special delivery stamps, moreover, is also beyond the scope of this proceeding. Special delivery was eliminated pursuant to the Governors' approval of the Commission's Recommended Decision in Docket No. MC96-3. The consequences of that proposal, along with issues arising from implementation, (continued...)

In his Motion to Compel, Mr. Popkin utterly fails to demonstrate a relationship between the proposals at issue in this docket and the discovery request. The gist of Mr. Popkin's argument is that because the Postal Service is proposing an increase in special handling fees, mailers may decide to no longer use that service, thereby causing mailers to "los[e] the value for Special Handling stamps that the mailer possesses." *Popkin Motion at 7.* Mr. Popkin's terse argument expressly addresses only special handling stamps;⁵ it appears he has made no attempt to demonstrate the relevance of the other subparts of the interrogatory that request information about the other types of stamp issues, such as airmail, parcel post, and official mail stamps. The Postal Service accordingly submits that, by apparently failing to address the remaining subparts, Mr. Popkin has waived his right to compel responses to them.

Mr. Popkin's attempt to demonstrate the relevance of his inquiry regarding special handling stamps is logically flawed. The fact that the Postal Service is proposing an increase for special handling does not "diminish" the value of special handling stamps. To the extent these stamps may now be used to pay fees under DMM § P022.2.0, these stamps are no less "valuable," in an objective sense, than 29 cent issues were the day that the 32 cent First-Class single piece rate was implemented pursuant to Docket No. R94-1. In short, a fee change alone does not,

⁴ (...continued)

should have been raised in that proceeding and subsequent rulemakings. Further attempts to relitigate matters concerning the implementation of special delivery are accordingly barred by the doctrines of *res judicata* and claim preclusion.

⁵ Mr. Popkin's Motion to Compel therefore addresses only subpart (i) and subpart (q), in part, to the extent it requests information about special handling stamps.

in and of itself, diminish the value of special handling stamps as a means of prepaying fees. See DMM § P022.2.0.⁶

Mr. Popkin asks for copies of library references referred to in his responses. Motion at 8. Mr. Popkin was at the Commission last week, and could obtain any necessary library references at that time. Although in many instances the Postal Service has provided additional help to Mr. Popkin in this proceeding, the Postal Service generally should not be required to do for Mr. Popkin what it does not have to do for other intervenors. The use of references to library references and workpapers provides adequate information in Commission proceedings, especially when such library references and workpapers are available (1) in the Commission docket room, and at the Postal Service library, (2) in most cases from the Commission's internet site⁷, and (3) when necessary, through loaner copies provided upon request by Postal Service attorneys.⁸ At the peak of discovery the Postal Service just does not have the resources to make extra copies of all referenced material in its responses.

The Postal Service rejects Mr. Popkin's allegation (Motion at 1–2) that, by making multiple filings to respond to his interrogatories, the Postal Service is trying to increase his costs of participation. Mr. Popkin's interrogatories have all been directed to the Postal Service, despite the fact that many of the questions relate directly to

⁶ Mr. Popkin's argument also ignores the possibility that, due to their age, special handling stamps, which were last issued in 1955, see 62 Fed. Reg. 31514 (June 10, 1997), may have philatelic value that exceeds their face value.

⁷ For example, several of the references Mr. Popkin complains about are from library reference H-107, the Postal Service's special service cost updates. An electronic version is available from the Commission's internet site, and has been downloaded successfully, the Postal Service believes, by individual intervenor Douglas Carlson.

⁸ Mr. Popkin has not shown that the Postal Service's practice of providing loaner copies when necessary is not working. See Presiding Officer's Ruling No. MC96-3/22 at 8.

areas covered by particular witnesses. The Postal Service could have filed institutional responses, but the Postal Service considered that to be unfair to Mr. Popkin and other intervenors, who would then have trouble determining upon which witness to conduct follow-up oral cross-examination. Different witnesses had interrogatory responses ready at different times, and given the large number of questions, the Presiding Officer's deadline for responses, and the rapidly approaching hearings, it seemed incumbent upon the Postal Service to file whatever was ready at the deadline, and everything else as soon thereafter as possible.⁹

Moreover, contrary to Mr. Popkin's assertion (Motion at 7), the Postal Service has filed responses or objections to almost all of Mr. Popkin's interrogatories DBP/USPS-1-68. Contrary to Mr. Popkin's claim, moreover, the few outstanding interrogatories result from inadvertent omissions or from the heavy workload during the peak discovery and hearing portion of the case (DBP/USPS-6(t-u), 7(l-m), 8(e, j-p), 29(i)(6), 52(a, m-p), 58, 59(h-l), and 67). Thus, there is no reason why the Presiding Officer should reverse his decision to deny Mr. Popkin "a blanket extension for filings until the last date when any follow-up interrogatory or motion to compel would be due." Presiding Officer's Ruling No. R97-1/21, at 2.

⁹ Resource constraints, rather than malice, limit the ability of the Postal Service to make individual contacts with intervenors during the peak period of discovery, or to send documents by e-mail or fax. The undersigned counsel was not aware of Mr. Popkin's fax number or e-mail address at the time he sent his September 29th objection by Express Mail.

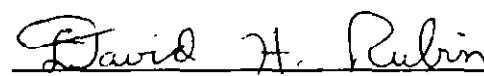
For all these reasons, Mr. Popkin's Motion should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

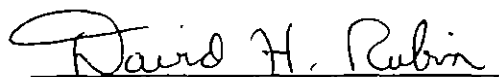
By its attorneys:

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David H. Rubin

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 H. Rubin

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