

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON DC 20268-0001

Postal Rate Commission  
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Postal Rate and Fee Changes, 2006]

DOCKET NO. R2006-1

DAVID B. POPKIN MOTION TO EXTEND THE DISCOVERY PERIOD FOR THE FOREVER  
STAMP PROPOSAL

August 7, 2006

Respectfully submitted,

R20061EXTEND

DAVID B. POPKIN, POST OFFICE BOX 528, ENGLEWOOD, NJ 07631-0528

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On Friday, July 14, 2006, the Postal Service filed the Direct Testimony of Altaf H. Taufique - USPS-T-48 and the associated Library Reference USPS-LR-L-152. Discovery was scheduled to end on August 7, 2006, some 24 days later.

At the earliest opportunity for participants to file discovery on this testimony, Monday, July 17, 2006, I filed a total of 72 Interrogatories relating to the Forever Stamp proposal [DBP/USPS 293 through 364] and Douglas F. Carlson filed another 20 Interrogatories [DFC/USPS-T48-1 through 20]. Under the Commission's Rules of Practice, responses to these Interrogatories were due 14 days later or July 31, 2006.

On July 19, 2006, I filed an additional five Interrogatories relating to the Forever Stamp proposal [DBP/USPS-365 through 369]. Responses to these Interrogatories were due on August 2, 2006.

The responses to these 97 Interrogatories have not been filed as of Friday, August 4, 2006. The ending of Discovery with respect to the Forever Stamp is presently set for today, Monday, August 7, 2006. This date contemplated that participants would have a minimum of seven days after the receipt of the first round of Interrogatories to ask additional Interrogatories with respect to the Forever Stamp proposal.

Rule 26[a] of the Commission's Rules of Practice provides in part:

Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be filed within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

As stated in the Rule, follow-up interrogatories must clarify or elaborate on the previous answer. Over the years, the Postal Service appears to have taken a very narrow view on what qualifies for a follow-up Interrogatory with respect to whether it clarifies or elaborates on the previous answer. The Postal Service has also at times taken the position that if I could have asked the Interrogatory prior to the expiration of discovery, then it would not qualify although I believe that this position has been ruled against by the Presiding Officer.

While this Rule is in effect throughout the entire proceeding, it really doesn't come into play until the discovery period has ended. Prior to that time, if an Interrogatory does not clarify or elaborate on the previous answer, it can just be treated as a new Interrogatory. After the end of the discovery period, participants may not submit new Interrogatories and are then restricted to submitting follow-up Interrogatories that must clarify or elaborate on the previous answer.

During the pursuit of discovery on a particular topic, the Forever Stamp in this instance, a participant will read and analyze the Testimony and associated Library Reference. At that point, a number of concerns may develop and the appropriate discovery plan will be developed. Unfortunately, in the Forever Stamp the shortened discovery period would allow for a maximum of only two rounds of Interrogatories [or only one round after submission of the initial Interrogatories].<sup>1</sup> However, in the Forever Stamp proposal, because the responses to the initial Interrogatories was not made on time, discovery will be limited to only the initial round of discovery.

The bigger problem is what happens as the discovery process proceeds. As responses are received to Interrogatories, new areas of discovery will emerge. In particular, statements made in discovery responses often raise issues that prompt a new line of inquiry that may be too broad to be deemed to clarify or elaborate on a previous answer. Therefore, while perhaps not strictly follow-up within the meaning of Rule 26[a], these new Interrogatories nonetheless are a direct result of statements in the previously filed statements. When you have six rounds of Interrogatories this will allow for pursuing these new areas. With the limited discovery

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<sup>1</sup> In the rest of Docket R2006-1, there were 72 days for discovery which would have allowed for a maximum of six [and even more so if responses were made in less than 14 days] rounds of discovery.

period for the Forever Stamp, coupled with the failure of the Postal Service to provide timely responses to the initial round of discovery, that ability to pursue new areas of interest has been completely foreclosed.

It is also noted, with some concern, that the Postal Service did not see fit to file the Forever Stamp proposal until some 72 days after the rest of the omnibus case and then, to add insult to injury, wants to push thru settlement on this proposal which, if the Postal Service gets its way, will not go into effect for several years.<sup>2</sup>

In many of their Motions for Late Acceptance of Responses, the Postal Service states that they believe that no party will be prejudiced by their late filing. Well I feel that I have been prejudiced by their late filing with respect to the Forever Stamp for the reasons noted above. This was also noted in a similar manner in my July 21, 2006, pleading as referenced in footnote 1 of the Presiding Officer's Ruling No. R2006-1/27 issued on August 1, 2006.

<sup>1</sup> David B. Popkin filed a response to the Postal Service's motion noting these responses were 31 days late, and urging that parties prejudiced by late filing of responses after the close of discovery be permitted to file follow-up interrogatories that are triggered by late responses so long as they are filed within 7 days. Response of David B. Popkin to the Motion of the United States Postal Service for Late Acceptance of Responses to Institutional Interrogatories from David Popkin, July 21, 2006, at 1. Mr. Popkin will be permitted to file legitimate follow-up interrogatories within this timeframe.

It is not clear by the above footnote whether I would be able to file interrogatories that are triggered by late responses so long as they are filed within 7 days or I would be restricted to filing Interrogatories that must clarify or elaborate on the previous answer [just like any other participant's right] regardless of the late filing of the Postal Service.

Based on the above, I move that the discovery period for the Postal Service's Forever Stamp proposal be extended until seven days after responses to all of Interrogatories DBP/USPS 293 through 364 and DFC/USPS-T48-1 through 20 have been filed or five days after responses to Interrogatories DBP/USPS-365 through 369 have been filed, whichever is later. In that way, participants will have the same time period available to pursue lines of discovery that would have been permitted had the Postal Service filed timely responses to Interrogatories. The participants should not be restricted to filing follow-up Interrogatories which are required to

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<sup>2</sup> It would not have any effect until the next rate case after the present one.

meet the strict interpretation of the Rule 26[a] of the Commission's Rules of Practice and therefore be prejudiced as noted.

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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 7, 2006

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