

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 DBP/USPS INTERROGATORIES
(DBP/USPS-19(A), 69-71, 96(A), 98, AND 103-343)
(December 29, 1997)

The United States Postal Service hereby opposes the motion of David B. Popkin to compel responses to interrogatories DBP/USPS-19(a), 69-71, 96(a), 98, and 103 through 343, filed on December 22, 1997 (hereinafter Motion), for the reasons discussed below.

Mr. Popkin argues that interrogatories DBP/USPS-103-257 "relate to the methods being utilized with respect to supporting the Postal Service's claim of high value for Return Receipt Service on accountable mail destined for delivery to recipients with a high volume of accountable mail." Motion at 1. The Postal Service disagrees. Witness Plunkett supports his claim that return receipt service has a high value of service by citing "the strong recent volume growth despite fee increases." USPS-T-40 at 14. These interrogatories do not attempt to rebut that claim, but instead concern Field practices in processing return receipt and other accountable mail.

These practices are not materially relevant to the proposed fees for return receipt service, or other accountable services. In particular, the Postal Service does not justify its fee proposal on a premise that return receipts are always delivered so that a carrier waits while a signature is obtained on each return receipt. Furthermore, the

Postal Service's fee proposal for return receipt service does not depend on a finding of a high value of service, since the proposed cost coverage (149 percent) is well below the average coverage proposed for all classes and services in this proceeding.

Mr. Popkin argues that his discovery must be permitted in order to prevent the record from "indicat[ing] that all accountable mail is being delivered in compliance with the regulations." Motion at 2. Mr. Popkin misstates the condition of the record. Witness Plunkett's response to interrogatory DBP/USPS-32(b) admitted that in some cases it is possible that a return receipt is not signed until after delivery to the addressee. Tr. 3/921. At his hearing witness Plunkett acknowledged the possibility that return receipts are delivered to the IRS and signed later, and that such a practice would not be consistent with the DMM. Tr. 3/1031-32. So the record already is clear as to the possibility that there are practices in the Field that are inconsistent with the general provisions for return receipt service.¹ Documenting instances of such practices will not add materially to the record in this proceeding.² Contrary to Mr. Popkin's claim (Motion at 4), moreover, the detailed inquiries in these interrogatories are directed more to oversight of Postal Service's operating practices, rather than to determining the level of service provided by the Postal Service.³

¹ On the other hand, there is no evidence that practices are inconsistent with the DMCS provisions for return receipt service, which correctly focuses on the service providing "evidence to the mailer that an article has been received at the delivery address." DMCS § 16.010.

² Mr. Popkin's concerns that the Postal Service is not living up to its own regulations should be presented directly to the Postal Service (for example, to the Postal Service's Consumer Advocate), rather than through the Commission.

³ For example, part (j) of interrogatories DBP/USPS-106 through 171 asks for the normal and maximum time period between the time of delivery and the return of the return receipt to the Postal Service. Part (d) of interrogatories DBP/USPS-172 through 257 asks whether each District Manager took a proactive approach in response to the Sandra Curran letter of August 1, 1996 relating to the proper handling of return receipt mail, by

Mr. Popkin's claim (Motion at 2) notwithstanding, witness Plunkett does not need to file a supplementary response to any of his interrogatories. His testimony, taken in its entirety, already presents an accurate understanding of the level of return receipt service. Special Rule 2C, moreover, limits the requirement to supplement responses to "up until the date that answers are accepted into evidence as written cross-examination." Witness Plunkett's responses to interrogatories concerning delivery of return receipt mail were entered into evidence on October 7, 1997. *E.g.*, Tr. 3/866-68, 921.

It is moreover too late to use discovery on the Postal Service to clarify the record concerning the testimony of the Postal Service's direct witnesses. Instead the record can be supplemented through intervenor testimony, and then through testimony in rebuttal to intervenor testimony.⁴

In this regard, the Postal Service disagrees with Mr. Popkin that Special Rule 2E permits interrogatories DBP/USPS-103 through 343. The Commission has set limits on discovery, including discovery directed to the Postal Service. Thus, discovery concerning areas that are addressed by a witness presenting part of the Postal Service's direct case should be completed, except for timely follow-up, before the witness's hearing.⁵ Even if there were incorrect information presented as part of the

contacting all of the delivery offices and facilities within the District.

⁴ See Presiding Officer's Ruling No. R97-1/70, at 4.

⁵ Presiding Officer's Rulings No. MC96-3/36 at 2, R87-1/138 at 4-5. Consistent with these rulings, the Presiding Officer recently denied CAUUC's motion to compel discovery under Rule 2E, because the questions could have been asked previously, and responses would not enable CAUUC to file additional relevant evidence. Docket No. MC97-5, Tr. 7/1653.

Contrary to Mr. Popkin's argument, Motion at 2-3, the Postal Service does not believe that an intervenor who conducts a substantial amount of discovery on the Postal Service

direct case (and the Postal Service does not believe that witnesses Plunkett or Sharkey presented any incorrect information), the time to show that through discovery has past.⁶

If the discovery addressed areas outside of the Postal Service's direct case, the discovery would still not be timely unless it were needed to prepare testimony to rebut intervenor cases.⁷ Mr. Popkin's suggestion that the information he is requesting could be used by him to rebut Mr. Carlson's testimony is dubious, given that both Mr. Popkin and Mr. Carlson appear to be trying to show the same shortcomings in the Postal Service's return receipt service.

Special Rule 2E moreover is limited to "information (such as operating procedures or data) available only from the Postal Service." Interrogatories DBP/USPS-103 through 257 would require the Postal Service to conduct a survey of Field facilities to determine the exact delivery practices for certain return receipt mail, for each facility. The Postal Service believes that Special Rule 2E was intended to be limited to readily available data, and generally applicable operating procedures. This Rule should not be expanded to require the Postal Service to conduct Field inquiries to determine how return receipt delivery practices might vary at different locations, or

should be able to rely on their readings of the Commission's Rules, without reference to Presiding Officer's rulings applying those Rules to particular circumstances.

⁶ Mr. Popkin apparently had letters concerning IRS return receipt mail that he could have used during the regular discovery period, but he chose not to do so. Motion at 2; DFC/USPS-T40-XE-2, 7.

⁷ Presiding Officer's Ruling No. MC96-3/36 at 2. Contrary to Mr. Popkin's assertion (Motion at 3), footnote 6 of the Postal Service's objection was not intended to suggest that Mr. Popkin could not file testimony in this proceeding, nor to intimidate Mr. Popkin from filing testimony.

to determine where there may be exceptional practices.⁸ Interrogatories DBP/USPS-258 through 343 similarly do not request data or operating procedures, but rather a survey of the Districts to determine the extent of provisions in place to ensure Express Mail meets its delivery standards.

Contrary to Mr. Popkin's assertion, Motion at 4, interrogatories DBP/USPS-258 through 343 do not directly concern the level of service for Express Mail, but instead ask about the extent of provisions in place to ensure that Express Mail meets its delivery standards. During cross-examination, moreover, witness Sharkey did respond to questions on this issue, without promising a written response.⁹ Again contrary to Mr. Popkin's claim, Motion at 4, responses to these interrogatories will not show that the promised level of service for Express Mail does not exist, but instead only reveal the extent of Postal Service procedures to monitor Express Mail deliveries.

Mr. Popkin's Motion does not address the Postal Service's burden objections with respect to interrogatories DBP/USPS-103 through 343, consisting of 2,410 parts which require surveys to obtain detailed information from the Field. On burden grounds alone the Motion should be denied.

Mr. Popkin moves to compel an additional response to interrogatory DBP/USPS-19(a), which requested total revenue and expense figures for philatelic products for

⁸ Mr. Popkin's quote (Motion at 3), of undersigned Postal Service counsel during witness Needham's hearing, concerned Mr. Carlson's request to file an institutional interrogatory asking for studies or other information indicating the average post office box delivery cutoff time posted in box lobbies nationwide. Tr. 3/657–58. My conditional response did not state that this interrogatory would be timely under Rule 2E, but such an interrogatory, in contrast to Mr. Popkin's interrogatories, did appear to ask for "data" within the limits of Rule 2E.

⁹ Tr. 4/2126–29.

the past ten years. The Postal Service initially filed a response to this interrogatory on October 10, 1997, which indicated that the precise information requested by Mr. Popkin did not exist, but stated that certain related information could be found in the Comprehensive Statement on Postal Operations.¹⁰ Mr. Popkin brought a motion to compel on November 20, 1997, which, among other misrepresentations, implied that the Postal Service had failed to provide the requested information. In response, the Postal Service reiterated that the specific information requested by Mr. Popkin did not exist, but further stated that it would prepare a library reference containing the related information from the Comprehensive Statement on Postal Operations. A copy of this library reference (LR-H-314) was mailed to Mr. Popkin. On December 12, 1997, the Presiding Officer held that the preparation and forwarding of this library reference to Mr. Popkin was "sufficient." Presiding Officer's Ruling No. R97-1/80, December 12, 1997, at 3. Nonetheless, Mr. Popkin, refuses to accept the fact that the information he wants does not exist. Mr. Popkin claims that the library reference "does not provide the requested information, namely, the revenue and expense for each of the ten years. I am hard pressed to believe that this information is not available. . . ." Motion at 5. The Postal Service states, yet again, that the information Mr. Popkin wants does not exist. He has been supplied the available, related information in Library Reference H-314. Mr. Popkin's repeated motions simply will not result in non-existent information suddenly materializing.

¹⁰ It is logical that such information does not exist. As the Postal Service pointed out in its response, "For example, revenue from sale of stamps is not separated in accounting records between the amount that is to be used for postage and the amount that is to be saved by collectors." As should be obvious, there is no precise way to track the actual figures.

The Postal Service filed its responses to interrogatories DBP/USPS-69 through 71 on December 24, 1997, so Mr. Popkin's motion to compel these responses should now be denied as moot.

In response to Mr. Popkin's motion to compel responses to DBP/USPS-96(a) and 98, the Postal Service filed its objections to these interrogatories, with a motion for late acceptance, on December 23, 1997.¹¹

For all these reasons, Mr. Popkin's Motion to compel responses to interrogatories DBP/USPS-19(a), 69-71, 96(a), 98, and 103 through 343 should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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December 29, 1997

¹¹ These objections were prepared for filing on December 8, 1997, but were not filed at that time.

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.


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