

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

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE  
TO DAVID B. POPKIN MOTION TO COMPEL RESPONSE  
TO INTERROGATORIES DBP/USPS-522, 523, AND 524(a)  
(September 13, 2006)

In accordance with Rule 26(d) of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby responds in opposition to the David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-522, 523, and 524, part (a), filed on September 6, 2006. For the reasons presented herein, the Postal Service respectfully requests that Mr. Popkin's Motion be denied. Each interrogatory will be considered in turn.

**DBP/USPS-522**

This interrogatory reads as follows:

**DBP/USPS-522** Please refer to your response to Interrogatory DBP/USPS-380. The following Interrogatory relates to Express Mail that is entered in the system at a post office that is on the Guam side of the International Dateline and is destined to addressees that are on the 48-states side of the International Dateline. The effects of Sundays or holidays should not be considered. For purposes of this Interrogatory, please define the term "calendar date" as the date that will appear on a calendar at the particular location being considered and the term "physical day[s]" as the number of physical days that pass from the day the mailpiece is entered in the system to the day that the mailpiece is delivered [For example, if an Express Mail article is mailed on a calendar day of Monday in Guam, the calendar day in Honolulu at that time of mailing will be Sunday and the overnight physical day to delivery would have the article delivered in Honolulu on a calendar day of Monday after the passage of one physical day].  
[a] For Express Mail that crosses the International Dateline, does the term "Next" or "2nd" under Day of Delivery refer to calendar days or physical days?

[b] Does the "Scheduled Date of Delivery" show the calendar date at the delivery location or does it take the effects of the International Dateline?

[c] For Express Mail deposited in Guam and other locations on that side of the International Dateline and destined for delivery across the International Dateline, are there any locations that will be guaranteed delivery on the next physical date?

[d] If so, provide a general indication of the places that will receive this level of service.

[e] Will all other areas on the 48-states side of the International Dateline receive a guaranteed delivery on the second physical day or will some areas receive a guaranteed delivery on the third physical day?

[f] If some areas receive a guaranteed delivery on the third physical day after mailing, please provide a general indication of the places that will receive this level of service.

[g] Please confirm, or explain if you are unable to confirm, that delivery on the third physical date, even though it is still only two calendar days later does not meet the service standards of overnight or 2-day delivery [assume no effect of Sunday or holiday delivery].

The Postal Service objected to the entirety of this interrogatory on the grounds of relevance, as well as to part (g) on the grounds of argumentativeness.

The relevance of rate case interrogatories that inquire into the operational specifics of Express Mail are predicated on whether they seek a level of detail that is appropriate to the fact that the purpose of this proceeding is to recommend the *rates* for Express Mail on an aggregate, *nationwide* basis. As the Presiding Officer noted in Docket No. R2005-1, a "rule of reason limits the extent to which [the] operational details [of Express Mail service] are appropriate for exploration in discovery."<sup>1</sup> Consistent with this "rule of reason," the Postal Service need only respond to interrogatories that seek "general information" about Express Mail service,<sup>2</sup> which bears materially on the its "overall value of service."<sup>3</sup>

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<sup>1</sup> POR No. R2005-1/19 at 3.

<sup>2</sup> See POR No. R97-1/53 at 5.

<sup>3</sup> See, e.g., POR No. R2006-1/55 at 4 (quoting POR No. R2005-1/83 at 2); POR

The detailed questions posed here relating to Express Mail service from those domestic destinations that are across the International Dateline clearly fall outside the proper scope of discovery into Express Mail in this proceeding. As Mr. Popkin cannot deny, the domestic Express Mail service that is provided from certain small Pacific islands that lie across the International Dateline, such as Guam, represents an atypical, and very small, amount of Express Mail. Details concerning the level of Express Mail service that is provided from those individual destinations is simply not relevant to the overall value of service of Express Mail.

The only argument that Mr. Popkin musters in support of the relevance of parts (a) through (f) of this interrogatory is based on fallacious reasoning. He argues that because the Postal Service provided a response to DBP/USPS-380, an interrogatory that seeks to follow-up on that response must also be relevant.<sup>4</sup> Clearly, however, the mere fact that an interrogatory is a follow-up to a previous interrogatory response does not automatically make it relevant; instead, it must be independently judged as to whether the follow-up details sought are relevant, based on the principles discussed above at page 2. This is a clear lesson from Presiding Officer's Ruling No. R2006-1/55, in which the Presiding Officer denied a Motion to Compel from Mr. Popkin with respect to a follow-up interrogatory (DBP/USPS-381) that sought further operational details concerning Express Mail

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No. R2001-1/28 at 5.

<sup>4</sup> See Popkin Motion at 3 (“If [interrogatory DBP/USPS-380] was relevant to the value of service, a follow-up interrogatory to clarify this response is equally relevant and necessary to obtain the full picture of this category of Express Mail.”). Of course, the fact that the Postal Service provided a response to DBP/USPS-380 in no way constitutes an admission that the information sought therein is relevant to an omnibus rate proceeding.

cut-off times. The Presiding Officer noted that the level of detail concerning those cut-off times already provided for the record in the response to the original interrogatory (DBP/USPS-166) was “an appropriate level of detail for this rate case,” and that “Mr Popkin has not persuasively argued why the Postal Service should be required to provide more detail.”<sup>5</sup> Thus, a follow-up interrogatory is not relevant simply because it is a follow-up; it is only relevant if it is seeking details that are appropriate for inclusion on the record of this proceeding. Mr. Popkin therefore completely fails to demonstrate with any specificity how parts (a) through (f) are relevant to this proceeding.

With respect to part (g), Mr. Popkin asserts that a response is necessary in order to “clarify the last sentence of the response to Interrogatory DBP/USPS-380.”<sup>6</sup> Clearly, however, part (g) is intended to do no such thing. In the last sentence of its response to DBP/USPS-380, the Postal Service made the factual statement that no backwards adjustment is made to the service guarantee for Express Mail traveling eastbound across the International Dateline. Part (g) evinces no confusion on the part of Mr. Popkin with this response such that a “clarification” of the record is needed on his part, but instead asks the Postal Service to confirm his apparent belief that the lack of such an adjustment means the Postal Service is not meeting the service standards applicable to Express Mail. If Mr. Popkin wishes to make such an argument, the proper place to do so is on brief, rather than through an interrogatory.

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<sup>5</sup> See POR No. R2006-1/55 at 8.

<sup>6</sup> See Popkin Motion at 3.

This is, in the end, simply another situation in which Mr. Popkin's interest in a particular issue concerning the Postal Service prompts him to seek further and further details about that issue through a string of interrogatories.<sup>7</sup> At a certain point, the level of detail sought simply becomes excessive for purposes of this proceeding (if the issue was even relevant to begin with). Under Mr. Popkin's argument as to why this interrogatory is relevant, once the Postal Service answers an interrogatory about a certain topic, he is then entitled to a response to any and all follow-up questions that he feels are necessary to achieve what he considers to be a "full picture" of the topic in question.<sup>8</sup> Such an argument is, of course, completely unsupported by Commission precedent, would clutter the record with irrelevant minutiae about the Postal Service, and would likely dramatically increase the amount of motions practice at the early stages of omnibus rate cases.

The Postal Service has now responded to several interrogatories that have dealt with Express Mail service across the International Dateline.<sup>9</sup> To the extent that Mr. Popkin believes that the Postal Service's provision of Express Mail service from those domestic destinations in the Pacific that are across the International Dateline should somehow affect the Commission's recommendation of Express Mail rates, the information provided by the Postal Service in those responses provide him with more than sufficient information in which to do so. The further details sought in this follow-up interrogatory simply go well beyond

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<sup>7</sup> The issue of Express Mail service across the International Dateline has arisen in DBP/USPS-31, DBP/USPS-161, and DBP/USPS-380.

<sup>8</sup> See Popkin Motion at 2.

<sup>9</sup> See *supra* note 7.

what is material to this proceeding, and Mr. Popkin completely fails to present an reasonable argument asserting otherwise.

**DBP/USPS-523**

This interrogatory reads as follows:

**DBP/USPS-523** Please refer to your response to Interrogatory DBP/USPS-382 subpart b [incorrectly shown as subpart c on the response]. If one adds the implied statement to the Interrogatory of "and receive the guaranteed delivery standards that are established for mail deposited that day" at the end of the Interrogatory it would indicate the intent of the original Interrogatory for which a response is desired.

In other words, is an office is permitted to establish a cut-off time prior to the opening of the retail service window hours - such as a cut-off time at 7 AM and the window doesn't open until 8 AM and therefore making it impossible for a mailer to enter an Express mailpiece over the retail window in a manner that will achieve the delivery standards for mail deposited that date.

The Postal Service objected to this interrogatory on the grounds of timeliness and improper follow-up. This interrogatory purports to follow-up on the Postal Service's response to interrogatory DBP/USPS-382, part (b), and by extension its response to interrogatory DBP/USPS-166, part (b). Those interrogatories, however, queried the Postal Service as to when a mailer could "deposit" Express Mail at an office; the Postal Service answered by stating that Express Mail can be deposited whenever the office is open. This interrogatory, on the other hand, poses a completely different, and much more complicated, question about the ability of a particular acceptance unit to set an Express Mail cut-off time prior to its retail window service hours, and the effect of such a cut-off time on the available service commitments from that office. This is clearly a new inquiry, and thus does not qualify as a follow-up to the Postal Service's

responses to the original interrogatories under Rule 26(a).<sup>10</sup> As such, this interrogatory is untimely because it was filed after the discovery deadline of July 14, 2006.

Mr. Popkin in no way rebuts the Postal Service's argument that this interrogatory seeks new information beyond the discovery deadline. Instead, he argues that the "intent" of interrogatories DBP/USPS-166, part (b), and DBP/USPS-382, part (b), were to ask the question that was posed in this interrogatory. It is beyond dispute, however, that those interrogatories asked a completely different question, one that was fully answered. While Mr. Popkin may have "intended" to ask this question before the discovery deadline, that intent is not a sufficient basis for justifying a "follow-up interrogatory" that, contrary to Rule 26(a), in no way seeks to clarify or elaborate upon the answer provided to the original interrogatory.

**DBP/USPS-524(a)**

This interrogatory reads as follows in its entirety:

**DBP/USPS-524** Please refer to your response to Interrogatory DBP/USPS-167. This follow-up Interrogatory is being filed today [since it must be filed within 7 days] without prejudice to my Motion to Compel a full response to the original Interrogatory. Your response indicates that I should refer to the response to Interrogatory DBP/USPS-127 filed in Docket R2005-1 as follows: DBP/USPS-127. Please refer to your response to DBP/USPS-88.  
(a) Please confirm, or explain if you are unable to confirm, that the data provided in response to Interrogatory DBP/USPS-65 subpart d in Docket R2001-1 is still correct for the 20 referenced offices.  
(b) Please provide an estimate as to the number of additional post offices that would be added to the listing if a complete study was made.

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<sup>10</sup> See POR No. R2001-1/40 at 4 (denying a Motion to Compel with respect to a follow-up interrogatory because the interrogatory did not "aid in clarifying or add to the understanding of the underlying interrogatory," but rather opened up a new line of questioning).

(c) Since most of the offices appear to be in Alaska, has the District Manager of the Alaska District been queried as to the offices in his District that do not have 6-day a week mail service? If not, why not? If so, what was the response?

RESPONSE:

(a) The data is still correct for 15 of the 20 offices cited. The offices of Chitina, Chignik, Chignik Lagoon, Eagle, and King Cove are currently receiving shipments of Express Mail six days per week.

(b) As noted in the response to DBP/USPS-88, a complete study would produce list that is substantially similar in both size and scope to the one provided in response to DBP/USPS-65(d) in Docket No. R2001-1. A quantitative estimate by which the number of offices on that list would increase (or decrease) cannot be provided because no complete study has been undertaken.

(c) The District Manager has been queried and responds that the service being provided is a longstanding traditional service to very unique and remote areas that are experiencing no growth whatsoever, that an appropriate level of service is being provided, and that there are no initiatives under consideration to change the present level of service.

[a] Please refer to the response to subpart c of Docket R2005-1 Interrogatory and provide a response from the District Manager of the Alaska District showing which offices in his District that do not have 6-day a week mail service. The response that was originally made did not respond to the request that was made but attempted to explain and justify why there are offices that do not have 6-day a week mail service.

[b] The response to Interrogatory DBP/USPS-380 appears to indicate that there are some instances where there are excessive distances [or lack of transportation] to meet the guaranteed delivery standards. Please explain.

The Postal Service objected to part (a) of this interrogatory, which seeks an updated listing of those post offices in Alaska that do not have six-day-a-week delivery of Express Mail, on the grounds of relevance, burden, and improper follow-up. Most fundamentally, the Postal Service noted in its Objection that information about such an extremely small number of offices is not relevant to this proceeding, and that the burden of responding would clearly outweigh the information's materiality. The Postal Service concluded by stating that its response to DBP/USPS-167, filed on August 8, 2006, provides Mr. Popkin with more than sufficient information concerning Express Mail service to remote Alaskan offices.

In his Motion to Compel, Mr. Popkin argues that this interrogatory is relevant because the “level of service for Express Mail in Alaska is equally relevant to the level of service in the other 49 States.”<sup>11</sup> He also challenges the Postal Service’s burden objection, alleging that “there should be no burden other than [an] exchange of emails” since he is “sure” that the Alaska District has this information “readily available.”<sup>12</sup>

This interrogatory clearly falls outside the proper scope of discovery into Express Mail service in this proceeding. As noted above at page 2, there is a limit to which the operational details of Express Mail service (or, for that matter, the service provided to any other class of mail) are appropriate for exploration in discovery in an omnibus rate proceeding,<sup>13</sup> consistent with the fact that the Commission’s task is to recommend the *rates* for Express Mail on a *nationwide* basis. This interrogatory, however, inquires into Express Mail service to an extremely small number of offices located in remote, sparsely populated areas of Alaska, and thus concerns an atypical, and very small, amount of Express Mail

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<sup>11</sup> See Popkin Motion at 5.

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., POR No. R2006-1/55 at 8 (denying a Motion to Compel with respect to a follow-up interrogatory on the grounds that the operational information provided in the original interrogatory was “an appropriate level of detail for this rate case,” and that “Mr Popkin has not persuasively argued why the Postal Service should be required to provide more detail”); POR No. R2005-1/19 at 3 (stating that “a rule of reason limits the extent to which operational details are appropriate for exploration in discovery”); POR No. R2001-1/32 at 4 (stating that the Postal Service is not required to delve into “operational minutiae” concerning a service); POR No. R2000-1/56 at 2, 11 (noting that the Postal Service need not respond to interrogatories that sought “highly specific” details about Express Mail); POR No. R97-1/53 at 2, 5 (stating that generally the operational details of Express Mail service are not relevant to § 3622(b)(2)--the “value of service” pricing criterion--in particular and rate proceedings in general).

volume.<sup>14</sup> Information about such a tiny and non-representative subset of Express Mail goes well beyond the type of general service information that is relevant to this proceeding, and has no relation to the “overall value of service” of Express Mail.

Commission precedent directly supports a conclusion that this interrogatory is irrelevant. In Docket No. R2005-1, the Presiding Officer denied a Motion to Compel by Mr. Popkin that argued that a updated listing of offices without six-day-a-week delivery of Express Mail, as requested by interrogatory DBP/USPS-88 in that Docket, was necessary in order to evaluate the value of Express Mail service.<sup>15</sup> The Presiding Officer stated that “the relevance of [such] updated information in this rate case is questionable at best since both parties agree that it affects an extremely small number of offices.”<sup>16</sup> The Presiding Officer ultimately held that a response would make only a marginal contribution to the record, which was outweighed by the burden that responding would place on the Postal Service.<sup>17</sup>

Mr. Popkin’s attempt to cast doubt on the burden to the Postal Service that would be required in order to respond to this interrogatory is based on unfounded and erroneous assumptions. Despite his belief to the contrary,<sup>18</sup> it would not be

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<sup>14</sup> Mr. Popkin’s contention that this interrogatory is relevant because “the level of service for Express Mail in Alaska is equally relevant to the level of service in the other 49 States” misses the point that this interrogatory asks about service not to Alaska, but to certain small, remote communities within that State.

<sup>15</sup> See POR No. R2005-1/43 at 2-3.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.*

<sup>18</sup> Popkin Motion at 5.

a simple matter to get this information from the Alaska District.<sup>19</sup> A list of offices that do not receive Express Mail delivery six-days-per-week is not maintained by the Postal Service in the normal course of business, and providing an updated list would require a *manual* review of Postal Service data systems by logistical experts in the field. The burden of responding is thus not insignificant, and clearly outweighs any contribution that this information would make to the record.

In the end, the Postal Service's response to DBP/USPS-167 in this Docket provides Mr. Popkin with more than enough information about the issue of Express Mail service to remote post offices. That response answered DBP/USPS-167 (which asked for an updated listing of post offices in the entire country—rather than simply in Alaska—without six-day-a-week delivery of Express Mail) by citing to the information provided in Docket No. R2005-1 (and, by extension, Docket No. R2001-1), and stating that updated information would be substantially identical to the information provided therein.<sup>20</sup> To the extent that

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<sup>19</sup> Mr. Popkin's assertion that this information should be easily obtainable from the field echoes an argument that he made in Docket No. R2005-1. See David B. Popkin Motion to Compel Response to Interrogatories 88, 90, 103, 129, 145, and 147, at 2-3 (arguing that "this information should be available at the area offices for their own areas and therefore easily obtainable"). The Presiding Officer did not find this argument convincing. See POR No. R2005-1/43 at 3 (noting that "full compliance with Mr. Popkin's request would require substantial Postal Service resources").

<sup>20</sup> The Postal Service's response to DBP/USPS-167 was modeled on the resolution of this issue in Docket No. R2005-1. In that Docket, as noted above at page 10, Mr. Popkin submitted an interrogatory similar to the one at issue here, requesting a listing of all post offices nationwide that do not have Express Mail delivery six-days-per-week (offices which are primarily concentrated in Alaska). See Docket No. R2005-1, DBP/USPS-88. The Postal Service responded by stating that any such listing would be "substantially identical in both size and scope" to the listing of those offices provided in Docket No. R2001-1. See Docket No. R2005-1, Response of the Postal Service to DBP/USPS-88 (citing the

Mr. Popkin wishes to argue that the “value of service” of Express Mail within the meaning of § 3622(b)(2) is materially affected by the fact that there are a handful of offices in Alaska that do not receive Express Mail delivery six-days-a-week, the information provided in Docket Nos. R2005-1 and R2001-1 clearly provide him with more than enough information in which to do so. Because of this, the Postal Service should not be required to devote the field resources that would be required to provide an updated list when such an effort would at the most discover only minor differences from the information provided in Docket Nos. R2005-1 and R2001-1.

Finally, in addition to its fundamental irrelevance, this interrogatory is not proper follow-up to the Postal Service’s response to DBP/USPS-167. In that response, the Postal Service stated that any updated listing of offices without six-day-a-week delivery of Express Mail would be substantially identical to the information provided on the record in Docket No. R2005-1 (and, by extension, Docket No. R2001-1). Providing the information requested by Mr. Popkin here—specifically, an updated listing of offices in Alaska without six-day-a-week delivery—would, however, in no way clarify or add to his understanding of the information provided by the Postal Service in those Dockets. As such, this interrogatory is not proper follow-up under Rule 26(a).

Overall, while Mr. Popkin may be interested in the issue of Express Mail delivery to remote post offices, this is not the proceeding in which to engage in

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response of the Postal Service to DBP/USPS-65(d) in Docket No. R2001-1). As also noted above at page 10, the Presiding Officer denied a subsequent motion by Mr. Popkin to compel a full update of the Docket No. R2001-1 list. See POR No. R2005-1/43, at 2-3.

an extensive exploration of that issue. This proceeding is directed towards establishing the rates for Express Mail on an aggregate, nationwide basis, and detailed information about such a miniscule and highly unrepresentative portion of Express Mail simply has no material relevance to the actual or relative value of service of Express Mail within the meaning of § 3622(b)(2). The minimal (if any) contribution to the record that a response to this interrogatory would have is also clearly outweighed by the burden that would be required to respond. Because of this, and because the Postal Service's response to DBP/USPS-167 provides Mr. Popkin with more than enough information about this issue, the Postal Service should not be required to answer this interrogatory.

**Conclusion**

For the reasons stated above, the Postal Service requests that the Presiding Officer deny Mr. Popkin's Motion to Compel in its entirety.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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