

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268 -0001

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING
CONCERNING MOTIONS TO COMPEL RESPONSES TO
INTERROGATORIES DBP/USPS-451-453, 467, 472, 473, 478,
520, 521, 534, 522, 523, 524(A), AND 553-555

(Issued September 22, 2006)

DBP/USPS-451 through 453. On August 28, 2006, David B. Popkin filed a motion to compel responses to interrogatories DBP/USPS-451 through 453.¹

DBP/USPS-451

Please refer to your response to Interrogatory DBP/USPS-279 subparts b through e.

- [a] Please confirm, or explain if you are unable to confirm, that the last sentence of your response means that if a given post office on the west coast has two separate cut-off times, namely, 2 PM for coverage to most of the 50 states and 5 PM for areas on the west coast only, that it will be permissible to have an Express Mail collection box with a single collection time of 4 PM which will arrive back at the post office too late for a guarantee to the 50 state area but in time for a guarantee to the west coast only [the 5 PM cut-off guarantee].
- [b] If subpart a above is confirmed, please confirm, or explain if you are unable to confirm, that Express Mail destined for the east coast will be delayed a day if deposited in the collection box.
- [c] Please explain why this scenario is an acceptable one, in other words, why isn't an earlier collection mandated to allow for processing to the area covered by the 2 PM cut-off time?

¹ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-451 through 453, August 28, 2006.

DBP/USPS-452

Please refer to your response to Interrogatory DBP/USPS-279 subparts b through e.

- [a] Please explain the apparent conflict between your response to the original Interrogatory which states that Express Mail receives a service commitment based on the deposit date and DMM Section 116.1.1.b which states that Express Mail deposited in an Express Mail collection box will have a time and date of mailing of the time that the mail was brought to the Express Mail acceptance unit.
- [b] Please confirm, or explain if you are unable to confirm, that DMM Section 116.1.1.b states, in effect, that the Postal Service will not accept any responsibility for Express Mail deposited in an Express Mail collection box, handed to delivery and collection employees during their normal delivery and collection duties, or picked up by USPS pickup service until the mail actually is brought back to the Express Mail acceptance unit and that in some large cities the mail may not arrive there until well into the evening and miss the dispatches of value. Furthermore, any delays or errors between the time the mail is or is supposed to be collected and the time it is actually turned over to the Express Mail acceptance unit are at the risk of the mailer.
- [c] Please explain the rationale for DMM Section 116,1,1,b with respect mail deposited in an Express Mail collection box.
- [d] Please explain the rationale for DMM Section 116,1,1,b with respect mail that is handed to delivery and collection employees during their normal delivery and collection duties.
- [e] Please explain the rationale for DMM Section 116,1,1,b with respect mail that is picked up or is scheduled to be picked up [a missed or delayed appointment] by USPS pickup service.

DBP/USPS-453

Please refer to your response to Interrogatory DBP/USPS-279 subpart f. Your response stated that the retail computers will allow the acceptance associate to roll back the mailpiece's acceptance time to the collection box tap time.

- [a] Is this a requirement rather than an option to do so?
- [b] If not, why not?
- [c] Is a similar roll back appropriate for Express Mail deposited at a retail service window a minute or two after the cut-off time by a customer that was waiting on line and/or a delay by the retail window clerk in processing the mailpiece?
- [d] If not, why not?

Mr. Popkin asserts that operational details that he is attempting to elicit are an integral part of the value of service. He contends that the interrogatories seek clarification of the Postal Service's response to DBP/USPS-279.

The Postal Service filed an objection to answering these interrogatories on August 14, 2006, and a reply to the motion to compel on September 5, 2006.² It objects to all of these interrogatories on the grounds of relevance, as they all seek operational details about Express Mail service that are immaterial to this proceeding. It does not argue that all operational details are never relevant, only that there is a limit to which such details are relevant. The Postal Service further objects to DBP/USPS-452(d) and (e) as untimely and improper follow-up. It contends that this interrogatory, submitted after the discovery deadline, delves into new topics.

DBP/USPS-467, 472 and 473. On August 30, 2006, David B. Popkin filed a motion to compel responses to interrogatories DBP/USPS-467, 472 and 473.³

DBP/USPS-467

Please refer to your response to Interrogatory DBP/USPS-124.

- [a] Under the present procedures please confirm, or explain if you are unable to confirm, that mailpieces that are insured for \$50 or less will be marked with an oval marking with the word INSURED contained in it.
- [b] How does the mailer obtain this marking for mailpieces that are not mailed over a retail window?

DBP/USPS-472

Please refer to your response to Interrogatory DBP/USPS-124. It is proposed in this Docket to change the necessity of obtaining the addressee's signature from parcels insured for \$50.01 or more to those insured for \$200.01 or more. Please indicate how it is proposed under the proposed regulations to mark each of the mailpieces that are presented in any authorized manner and for any authorized value of insurance. Please provide copies of the marking.

² Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-451-453), August 14, 2006; Opposition of the United States Postal Service to David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-451 through 453, September 5, 2006.

³ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-467, 472, and 473, August 30, 2006.

DBP/USPS-473

Please refer to your response to Interrogatory DBP/USPS-124. It is proposed in this Docket to obtain a delivery scan for all mailpieces insured for \$200 or less.

[a] Since this will now require an identifying number and barcode for mailpieces insured for \$50 or less, will it now be possible to obtain a return receipt for this type of mailpiece?

[b] If not, why not?

Mr. Popkin asserts that these interrogatories are relevant as they relate to the values of service for insured mail.

The Postal Service filed an objection to answering these interrogatories on August 17, 2006, and a reply to the motion to compel on September 5, 2006.⁴ The Postal Service contends that these interrogatories seek additional details that are not a logical next step in consideration of DBP/USPS-124 and are thus improper follow-up. Furthermore, DBP/USPS-467 and 472 seek a level of detail regarding insured mail beyond what is relevant to an omnibus rate proceeding and are thus not relevant to this proceeding.

DBP/USPS-478. On August 30, 2006, David B. Popkin filed a motion to compel a response to interrogatory DBP/USPS-478.⁵

DBP/USPS-478

Please refer to your response to Interrogatory DBP/USPS-287 subpart d.

[a] Please provide a breakdown for Express Mail that has a service guarantee of three or four days showing the percentage of the mail that is delivered in one calendar day, two calendar days, three calendar days, four calendar days, and five or more calendar days. Provide separate data for PO-PO vs. PO-Addressee mail.

[b] Please confirm, or explain if you are unable to confirm, that most, if not all, of the three and four day delivery guarantees are as a result of the inability to deliver Express Mail on a Sunday or holiday at the delivery office.

⁴ Objection of the United States Postal Service to Interrogatories of David B. Popkin to the United States Postal Service (DBP/USPS-467, 472, and 473), August 17, 2006; Opposition of the United States Postal Service to David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-467, 472, and 473, September 5, 2006.

⁵ David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-478, August 30, 2006.

- [c] Based on the response to subpart b above, please indicate the reasons how three and four day guaranteed mail can be delivered in one or two days.

Mr. Popkin argues that the actual times of Express Mail is relative to the value of service provided for Express Mail and therefore is relevant to this proceeding.

The Postal Service filed an objection to answering this interrogatory on August 17, 2006.⁶ The Postal Service argues that the detailed information sought here with respect to Express Mail pieces that receive a PTS standard of three or four days is not materially relevant to the recommendation of Express Mail rates in this proceeding.

DBP/USPS-520, 521, and 534. On September 6, 2006, David B. Popkin filed a motion to compel responses to interrogatories DBP/USPS-520, 521, and 534.⁷

DBP/USPS-520

Please refer to your response to Interrogatory DBP/USPS-409.

- [a] Please explain why the EXFC performance for cards and flats is significantly lower than that for letter-size mailpieces in all three categories [Overnight and 2- and 3-day].
- [b] Please advise the steps that are being taken to improve this performance.

DBP/USPS-521

Please refer to your response to Interrogatory DBP/USPS-379 subpart b.

- [a] Please explain why you believe that post office boxholders should be concerned that the construction of their post office box might not provide sufficient security for their mail.
- [b] Please advise the steps that are being taken to improve the security provided to post office box construction.

DBP/USPS-534

Please refer to your response to Interrogatory DBP/USPS-403. Your response provided a listing of some 469 3-digit ZIP Code prefixes that are not part of the EXFC program. This is slightly more than one-half of all of the 3-digit ZIP Code prefixes [since there are 463 3-digit ZIP Code prefixes that are part of the EXFC program].

⁶ Objection of the United States Postal Service to Interrogatory of David B. Popkin (DBP/USPS-478), August 17, 2006.

⁷ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-520, 521, and 534, September 6, 2006.

- [a] Please confirm that with this breakdown of areas the mail volume does meet the geographic and volume density from which 90% of First-Class volume originates and 80% destinate.
- [b] Please provide the raw data that will confirm that the 90% and 80% values referenced above are complied with.
- [c] Please indicate why the 463 prefixes have been chosen to be part of the program and/or why the 469 prefixes were not chosen to be part of the program.

Mr. Popkin states that DBP/USPS-520 is attempting to determine why the level of service for cards and flats is lower than that for letter-sized mailpieces as this data is relevant to the value of First-Class Mail service. Mr. Popkin argues that the security of mail in a post office box, explored through interrogatory DBP/USPS-521, relates to the values of service. In regard to DBP/USPS-534, Mr. Popkin argues that how ZIP Code prefixes were chosen relates to the value of service of First-Class Mail.

The Postal Service filed an objection to answering these interrogatories on August 24, 2006, and a reply to the motion to compel on September 13, 2006.⁸ The Postal Service objects to these interrogatories on the grounds of relevance and materiality, and because the questions do not properly follow up on the cited interrogatory responses.

DBP/USPS-522, 523, and 524(a). On September 6, 2006, David B. Popkin filed a motion to compel responses to interrogatories DBP/USPS-522, 523, and 524(a).⁹

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

⁸ Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-520-21, and 534), August 24, 2006; Reply of the United States Postal Service to Motion of David Popkin to Compel Responses to Interrogatories DBP/USPS-520, 521 and 534, September 13, 2006.

⁹ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-522, 523, and 524 subpart a., September 6, 2006.

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].

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,

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.
- (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.

Mr. Popkin argues that the original interrogatory, DBP/USPS-380, raises the question of how Express Mail is handled when it transverses the International Date Line. If this is relevant to the value of service, he contends that a follow-up interrogatory, DBP/USPS-522, to clarify the response is equally relevant. He contends that interrogatory DBP/USPS-523 is part of a continuous chain of interrogatories which can be seen as evaluating the responses to the previous interrogatories. He states that the level of service for Express Mail in Alaska is equally relevant to the level of service in the other states, thus interrogatory DBP/USPS-522(a) is relevant.

The Postal Service filed an objection to answering these interrogatories on August 24, 2006, and a reply to the motion to compel on September 13, 2006.¹⁰ The Postal Service objects to interrogatory DBP/USPS-522 on the grounds of relevance. It argues that the interrogatory is not relevant in this proceeding in general, or as to value of service within the meaning of § 3622(b)(2). Furthermore, the Postal Service objects to DBP/USPS-522(g) contending that it is argumentative. The Postal Service objects to DBP/USPS-523 on the grounds of timeliness and improper follow-up. It contends that DBP/USPS-523 is an entirely new line of questioning from what was asked in DBP/USPS-382, and by extension in DBP/USPS-166. The Postal Service objects to DBP/USPS-524(a) on the grounds of relevance, burden, and improper follow-up. It contends that its response to DBP/USPS-167 provides sufficient information with respect to this issue, and that any additional response would not clarify or add to understanding this information.

¹⁰ Objection of the United States Postal Service to Interrogatories of David B. Popkin (DBP/USPS-522-524(a)), August 24, 2006; 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.

DBP/USPS-553 through 555. On September 11, 2006, David B. Popkin filed a motion to compel responses to interrogatories DBP/USPS-553 through 555.¹¹

DBP/USPS-553

Please refer to your response to Interrogatory DBP/USPS-264. Please advise the type of data and information that is contained in Report IS-MA-06-001 that required withholding the entire report as opposed to providing a copy with necessary redactions.

DBP/USPS-554

Please refer to your response to Interrogatory DBP/USPS-264. Please advise the nature of each of the separate parts of the Report DR-AR-05-517 that were redacted and the reason for the redaction.

DBP/USPS-555

Please refer to Report Number DR-AR-05-517 provided in your response to Interrogatory DBP/USPS-264. Please confirm, or explain if you are unable to confirm, that the audit team evaluated a total of 10,006 parcels at four facilities situated in two Districts. Of these 10,006 parcels, 254 of them, or 2.54% of the parcels, were determined to require a surcharge and if was further determined that only 20 of these parcels, or 7.9%, of them were properly paid at the correct postage rate.

Mr. Popkin contends that when the Postal Service provides a report or a chart or any other information has any information redacted, it has an obligation to advise that information has been redacted. He further contends that while the Postal Service has the right to redact certain material, he has the right to know the nature of the redacted material.

The Postal Service filed an objection to answering these interrogatories on August 28, 2006, and a reply to the motion to compel on August 18, 2006.¹² The Postal Service argues that these interrogatories are not relevant to the issues in this case.

¹¹ David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-553 through 555, September 11, 2006.

¹² Objection of the United States Postal Service to Interrogatories DBP/USPS-552-555, August 28, 2006; Response of the United States Postal Service in Opposition to the Motion of David B. Popkin to Compel Responses to Interrogatories DBP/USPS-553-555, September 18, 2006.

The Postal Service states that Report IS-MA 06-001 titled "Security Over Sensitive Customer Data on Automated Postal Center Kiosks" was withheld at the request of the Office of the Inspector General, and that the Postal Service agrees with the sensitive nature of the report. The Postal Service states that the redactions to Report DR-AR-05-517 were made by the Office of the Inspector General, which functions independently, and that the reasons for the redaction are not a material issue in this docket. The Postal Service asserts that the figures represented in DBP/USPS-555 were taken from the referenced report. Thus, the report speaks for itself, and there is no need for the Postal Service to confirm its contents.

Ruling. The discovery requests at issue here are follow-up questions seeking additional details related to earlier Postal Service answers. The general thrust of many of Mr. Popkin's interrogatories attempt to explore the minutia of postal operations. For example, the interrogatories seek information concerning Express Mail at low volume offices in Alaska, or the impact of the International Date Line on days to delivery. This information is so attenuated to the evaluation of the value of any postal service as to have no relevance to the decision-making process in this case.

A second thrust of many of Mr. Popkin's interrogatories is an attempt to explore the technical details of how the Postal Service operates. For example, one group of interrogatories seeks information concerning how the Postal Service marks insured mail (whether or not certain insured mailpieces will be marked with an oval containing the word INSURED). Evaluating the value of service in an omnibus rate case should focus on the service that the Postal Service provides, rather than the minute internal details that make it possible for the Postal Service to achieve that level of service.

Mr. Popkin also has pursued a line of questioning concerning data that the Postal Service has redacted and information that the Postal Service has not produced because of its alleged sensitive nature. In general, the Commission requires an explanation for either redacting or in extreme cases withholding information such that it can decide on how to best protect sensitive material. The general nature of the material that was redacted in the Postal Service's response is self evident from

reviewing the document. The title of the material that the Postal Service did not submit, "Security Over Sensitive Customer Data on Automated Postal Center Kiosks," is sufficient information to inform the Presiding Officer of the sensitive nature of that material. Without the presentation of persuasive argument to the contrary, there is no reason to require the Postal Service to take further action.

The Commission views as one of its important functions, preserving the public's right to participate in § 3624 proceedings. Pursuant to that function, the Presiding Officer has carefully reviewed the disputes argued in each motion. After review, it is clear that the follow-up questions at issue are not reasonably designed to lead to relevant or material evidence admissible in this case. The motions to compel are denied.

RULING

1. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-451 through 453, filed August 28, 2006, is denied.
2. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-467, 472, and 473, filed August 30, 2006, is denied.
3. The David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-478, filed August 30, 2006, is denied.
4. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-520, 521, and 534, filed September 6, 2006, is denied.
5. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-522, 523, and 524 subpart a, filed September 6, 2006, is denied.

6. The David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-553 through 555, filed September 11, 2006, is denied.

George Omas
Presiding Officer